REPORT TO THE GOVERNOR AND THE LEGISLATURE

STATE EFFORTS TO END CHILDHOOD LEAD POISONING: EVALUATION OF ACT 113

April 13, 2005

Department of Health & Family Services
Division of Public Health

April 13, 2005

Dear Reader,

In Spring 2004, Governor Doyle announced his KidsFirst Initiative. The KidsFirst Initiative includes many important measures to increase the opportunities for children to grow up safe, healthy, and successful in strong families. A key area highlighted in the Governor's KidsFirst program is the importance of reducing children's exposure to lead paint. It is alarming that the rate of children in Wisconsin with lead poisoning is twice the national rate. The KidsFirst initiatives focus on strengthening screening and prevention of childhood lead poisoning. In collaboration with local public health departments and other partners, the Department has been intensifying childhood lead screening and prevention activities throughout the state.

Another important tool to support the Governor's KidsFirst goal to reduce children's exposure to lead is to ensure that Wisconsin has in place a well-designed and effective statutory framework related to regulation and enforcement. In 1999, the Wisconsin Legislature enacted Act 113, to address the problem of lead poisoning. This significant piece of legislation strengthened regulatory and enforcement measures in many important ways. As required by statute, the Department has completed an evaluation of the legislation. Our evaluation concludes that progress has been made in protecting children from lead. However, more can be done. This report identifies ways to strengthen the current statutory framework for lead-related regulation and enforcement.

We aspire to fully eliminate lead poisoning in Wisconsin by 2010. By pursuing a multi-pronged approach--including prevention and screening measures, as highlighted in the KidsFirst program, and a well-designed, effective statutory and regulatory framework–we can progress toward this goal.

Sincerely,

Helene Nelson
Secretary

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THIS REPORT WAS PREPARED BY THE DEPARTMENT OF HEALTH AND FAMILY SERVICES, DIVISION OF PUBLIC HEALTH AS REQUIRED BY 1999 WISCONSIN ACT 113.

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1. Executive Summary

Lead poisoning affects children in every corner of the state and hits hardest in the state's poorest neighborhoods. In 2004, 3,314 young children were diagnosed with lead poisoning in Wisconsin. All Wisconsin children deserve to be protected from exposure to toxic lead in their own homes that affects their health, growth, development, and future potential. Research clearly shows that in addition to physical health effects, when young children are exposed to lead they have lower IQ's, are more likely to have learning disabilities or require special education services and are more likely to end up in the juvenile justice system. It is for this reason that a wide array of policymakers, activists and other concerned citizens from across the state are now working to eliminate childhood lead poisoning.

In 1999, the Wisconsin Legislature enacted Act 113 to specifically address the lead poisoning epidemic. This historic piece of legislation provided important new tools for the Department of Health and Family Services and local units of government to fight lead exposure. This report constitutes an evaluation of Act 113.

The study's primary conclusion is that although we have made progress in protecting children from lead – more can be done. Analysis contained in this report indicates that one-third of all Wisconsin dwellings have lead-based paint hazards and that children under six years of age live in about 120,000 of these homes. Since 1996 we have seen a 70% decline in the number of children under the age of six that suffer from lead poisoning. This is a significant achievement but more can be done. At the current rate of progress 1,300 children will still be diagnosed with lead poisoning annually at the end of this decade. This is unacceptable.

In 2004, the department – in consultation with a committee of stakeholders – developed a new and bold plan to eliminate ALL lead poisoning by 2010.[1] This latest effort has led to the creation of an oversight committee composed of a diverse group of stakeholders who will help guide and monitor the state's ongoing efforts to achieve the elimination of childhood lead poisoning in Wisconsin. The committee developed policy priorities in the following areas:

- Increase lead screening and testing;
- Increase parent, physician, property owner and contractor education;
- Reduce lead hazards in "high risk" housing.
- Identify additional regulatory or financial policy tools to reduce lead hazards and prevent lead exposure.

Thanks to Act 113 and the 2010 plan, many necessary tools are in place to bring about a permanent end to lead poisoning in Wisconsin. What this report concludes however, is that more tools are available to reach our ambitious goal by the end of this decade. Given this reality, the department, after thorough study and consultation with stakeholders, developed the following list of policy options. Some of these measures have already been put forward by Governor Doyle in his 2005-07 Proposed State Budget. Others reflect lessons learned during the three years of implementing Act 113. The department believes that when taken as a whole these measures would strengthen Act 113 and greatly assist in achieving the important goal of eliminating lead poisoning by 2010.

The primary options identified include:

[1] Wisconsin Childhood Lead Poisoning Elimination 2010 Plan

1. Lower the blood level at which a health department response is required to reach children earlier.
2. Strengthen the law to **require** lead hazard reduction orders on properties where lead hazards are identified. (included in the Governor's Proposed Budget)
3. Eliminate the unsuccessful Mandatory Lead Registry Program as it duplicates state and local enforcement response efforts already in place.
4. Allow the department to placard properties with lead hazards as condemned for human habitation when the owner fails to comply with orders.
5. Reinstate the department's authority requiring inspections of high-risk rental properties.
6. Add renovation to the department's authority to write lead-safe work practices for demolition activities involving high-risk housing.
7. Clarify local government responsibilities and enforcement authority.

It is important to point out that these measures alone will not be enough to completely eliminate lead poisoning in Wisconsin. State government can not do this alone. To achieve the common goal all interested parties must re-double their efforts. Property owners must embrace the challenge of eliminating lead hazards from their rental properties so that they no longer cause childhood poisonings. In addition, all local units of government must step-up their enforcement efforts to ensure that lead is abated and children are taken out of harm's way. Only by working together can the stakeholders in this effort achieve their common goal of eliminating lead poisoning by the end of the decade.

2. Required Report on Act 113

1999 Wisconsin Act 113 requires that, "the department of health and family services shall prepare and submit to the governor and to the legislature in the manner provided under section 13.172 (3) of the statutes a report evaluating the successes or failures of this act and rules promulgated under this act in reducing the incidence of lead poisoning or lead exposure in children.[2] The report shall include any statutory changes that the department feels are needed to further the goal of reducing the incidence of lead poisoning or lead exposure in children."

This report provides background on Act 113, information about the extent of the lead problem (see Figure 1), successes and challenges of Act 113 provisions and options for statutory language changes the department feels would further the goal of eliminating childhood lead poisoning in Wisconsin by 2010.[3]

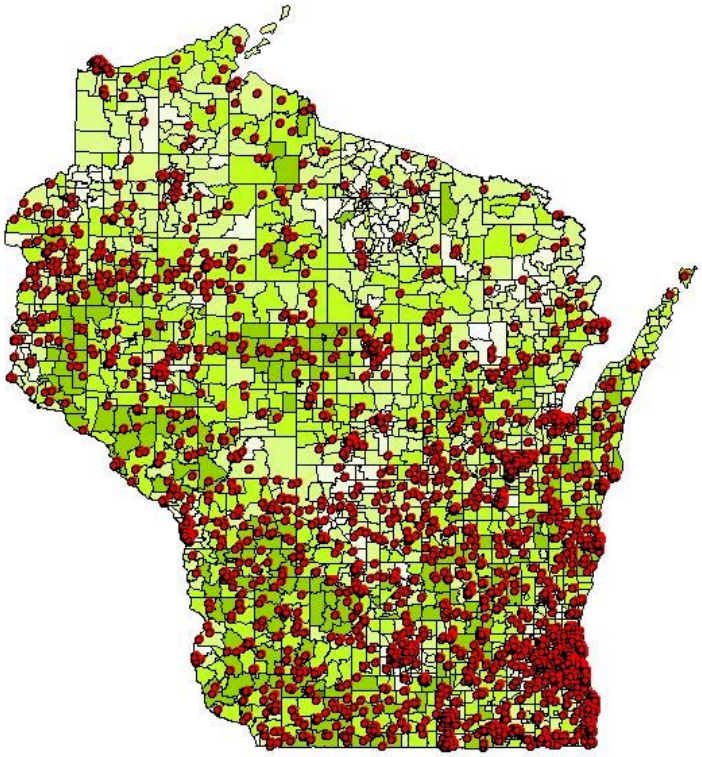


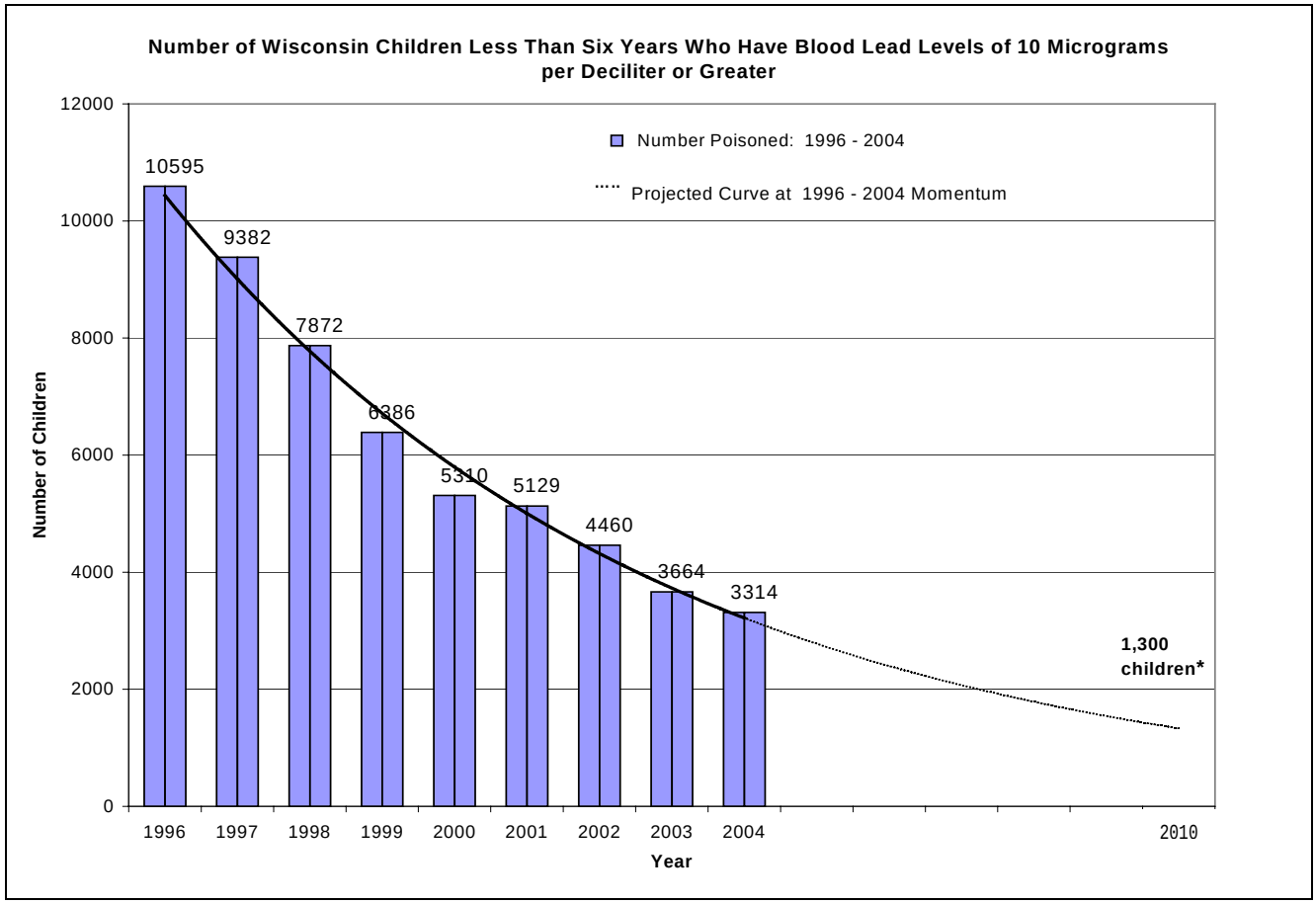
Figure 1: Locations Associated with Children with Lead Poisoning (≥10 ug/dL), 1999-2003

[2] Child and children mean, for purposes of this report, persons younger than six (6) years of age.

[3] The Centers for Disease Control and Prevention has charged each state with developing a plan to eliminate childhood lead poisoning by the year 2010. To meet this goal, the department assembled the Wisconsin Childhood Lead Poisoning Elimination Planning Committee comprised of representatives of health care, business, government, public health, child advocacy, rental property owners, and others. The committee met through June 2004 and completed its mandate to develop an elimination plan for submittal to CDC. The committee was reorganized in September 2004 as the Wisconsin Childhood Lead Poisoning Elimination Plan Implementation and Oversight Committee. The mission of the reorganized committee is to guide and monitor statewide efforts to eliminate childhood lead poisoning by 2010. Refer to Appendix A for a copy of the plan.

3. Scope of the Lead Problem in Wisconsin

The Centers for Disease Control and Prevention (CDC) defines childhood lead poisoning (elevated blood lead level) as a confirmed blood lead level of 10 micrograms of lead per deciliter of blood (10 µg/dl) or greater. By this criterion, over 30,000 Wisconsin children have been lead poisoned since 1997 (see Appendix A). Although both the prevalence and incidence of childhood lead poisoning has steadily declined over the past decade, still nearly 10,000 children have been poisoned since 2002 when the Lead-Free/Lead-Safe Registry went into effect under Act 113. At the current rate of progress, the state will not meet its goal of eliminating childhood lead poisoning by 2010 (see Figure 2).



* Assuming current testing rates and continuous rate of progress, Wisconsin will identify 1,300 children with lead poisoning in 2010. During 2004 only approximately 20% of children under six years old were tested for lead in blood.

Figure 2: Number of Wisconsin children known to be lead poisoned in 1996-2004 and number expected to be lead poisoned in 2010 at current rate of progress.

Lead poisoning affects virtually every system in the body, and often occurs with no distinctive symptoms. Lead can damage a child's central nervous system, kidneys, and reproductive system and, at higher levels, can cause coma, convulsions, and death. Even low levels of lead are harmful and are associated with decreased intelligence, impaired neurobehavioral development, decreased stature and growth, and impaired hearing acuity.

Recent research tells us that we can expect a loss of seven IQ points in a child poisoned at 10 micrograms per deciliter of blood, the minimum definition of lead poisoning. The same research determined that the greatest effects on IQ occur at lead exposure levels below 10 micrograms per deciliter of blood. There is no safe level of exposure to lead. Children exposed to lead at levels as low as 5 micrograms per deciliter of blood score significantly lower on standardized reading tests than children not exposed to lead at all.[4]

According to a federal study[5] published in 2002, 33% of occupied dwellings in the Midwest present significant lead hazards. By inference, there are 765,978 Wisconsin dwellings with lead-based paint hazards. We estimate that one out of six, or 120,000 Wisconsin homes with significant lead hazards, now house children under six years of age. Current publicly funded programs produce about 1,500 lead safe dwelling units per year in Wisconsin. At this rate, it will take Wisconsin decades to eliminate significant lead hazards in its housing.

Act 113 encouraged property owners to voluntarily address the problems of lead-based paint hazards by bringing their properties into compliance with state standards. By registering their properties, owners would be held not liable with respect to lead poisonings or lead exposures in those properties. Immunity was intended to attract widespread participation by property owners and create tens of thousands of registered lead-safe housing units that would protect more children from exposure to harmful lead in their homes.

However, despite significant outreach activities including radio, television and newspaper coverage and statewide public meetings and presentations to landlord groups promoting the benefits of the Registry, participation today remains minimal. After three years of administering the Registry, only 72 property owners have registered a total of 939 dwelling units in 116 buildings. This number represents 0.056% of the approximately 1.7 million pre-1978 dwelling units in the state (from the 2000 Census).

Total Registry revenue to date is $4,150, which is entirely insufficient to support the program. To reduce administrative costs, only one of the original five full-time equivalent positions authorized for the Registry is currently filled. The State has spent considerable resources creating and administering the lead-free/lead-safe registry, including a database infrastructure, but property owners have not used its protections and children are not being protected.

The fact remains that most lead-poisoned children are being exposed to toxic lead in their own homes. Deteriorated lead-based paint is the main source of their lead exposure. If property owners are not voluntarily correcting lead hazards and registering their properties other options need to be explored for ensuring that children are safe in their own homes.

Since 2000, the department has developed the capacity to evaluate and interpret surveillance information such as blood lead test results, local health department case management and lead hazard property investigation reports, insurance coverage, census data and tax assessor data to

[4] Canfield RL, et al. (2003). Intellectual impairment in children with blood lead concentrations below 10μg per deciliter. New England Journal of Medicine, 348(16): 1517–1526.

[5] Jacobs DE, et al. (2002). The prevalence of lead-based paint hazards in U.S. housing. Environmental Health Perspectives, 110(10): A599-A606.

determine time trends, risk factors and program needs to identify specific factors related to childhood lead exposures.

The data clearly demonstrate four areas of compelling need:

1. Wisconsin should accelerate efforts to provide blood lead tests to all high risk children, and specifically, children enrolled in Medicaid. Only 20% of Wisconsin children under age 6 years are currently tested, and only 48% of Medicaid enrolled children are currently tested even though required by Federal law.
2. Wisconsin must recognize that currently available resources are insufficient to evaluate lead hazards in the homes of all lead poisoned children. Resources are currently available for local health departments to conduct environmental investigations in the homes of only the most severely lead poisoned children, those with lead poisoning meeting the definition of elevated blood lead level, representing about 20% of lead poisoned children.
3. Wisconsin must focus attention on the condition of housing units that are occupied by families with young children. Under current policy, children are being used to find the lead hazards in their homes. Current policy to intervene in housing only after a child reaches a pre-set level of lead poisoning only ensures failure in protecting children.
4. Wisconsin will benefit economically by eliminating childhood lead poisoning. The department conservatively estimates that lead poisoning costs the State of Wisconsin over $14 million for each year's cohort of lead poisoned children in special education, medical care, juvenile justice and lost future earnings (see Appendix B).

4. Background of Act 113 and Current Lead Initiatives

For years, Wisconsin has worked to identify at-risk children and high-risk housing, increase screening rates of at-risk children, improve responses to children who are identified with elevated blood lead levels, and increase federal funding for reducing lead hazards in older housing to prevent future lead poisonings. The importance of these efforts is reflected in the state's Public Health Plan for 2010, which calls for the elimination of lead poisoning in children. Governor Doyle's Kids First initiative, announced in 2004, supports prevention efforts, including screening homes and eliminating lead hazards found in them before children are poisoned.

The Legislature acted to reduce lead poisoning in children by enacting 1999 Wisconsin Act 113. The Act created, among other provisions, the Lead-Free/Lead-Safe Property Registry, defined an "elevated blood lead level[6]," and required lead investigations in dwellings or premises when a child occupant was identified to have an elevated blood lead level. These initiatives were the result of collaboration by legislators, property owners, medical professionals, lead professionals, child advocacy groups, and state and local public health agencies to further reduce lead poisoning in children.

Two 1999 Wisconsin Supreme Court decisions provided the stimulus for 1999 Wisconsin Act 113. The first decision held landlords responsible for (1) knowing the condition of paint in their rental dwellings, (2) testing deteriorated paint in their rental dwellings for the presence of lead, and, (3) being liable for the lead poisoning of a child residing in the property.[7] The second decision held that lead paint debris is an environmental pollutant and, therefore, could be excluded from insurance coverage by a pollution exclusion clause.[8] These rulings of the Court increased the housing industry's concern about property owners' liability and insurability, particularly in the rental housing market.

In an effort to reduce the incidence of lead poisoning in children and, at the same time, respond to the effects of these court decisions, the Legislature created the Lead-Free/Lead-Safe Registry. The Registry encourages property owners to voluntarily bring their property into compliance with applicable state standards by providing immunity from liability if a child is lead poisoned while occupying a property with a lead-free or lead-safe certificate. These certificates are registered with the state in the Lead-Free/Lead-Safe Registry located at the Department of Health and Family Services (DHFS). Registered properties may be searched on the Internet at dhfs.wisconsin.gov/lead.

(Refer to Appendix C for additional information about the history of 1999 Wisconsin Act 113 in Wisconsin Legislative Council Legal Memorandum No. LM-2000-9.)

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[6] Elevated Blood Lead Level (EBLL) means a level of lead in blood that is twenty or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test (≥ 20 µg/dl), or, fifteen or more micrograms per 100 milliliters of blood (≥ 15 µg/dl), as confirmed by 2 venous blood tests that are performed at least 90 days apart. Note: 100 milliliters (ml) is equal to 1 deciliter (dl). For purposes of this report, the term *deciliter* will be used rather than 100 milliliters.

[7] Wisconsin Supreme Court, Case No. 96-0328, http://www.courts.state.wi.us/html/sc/96/96%2D0328.htm

[8] Wisconsin Supreme Court, Case No. 97-0332, http://www.courts.state.wi.us/html/sc/97/97%2D0332.htm

5. Report on Act 113 and Ch. HFS 163, Wis. Admin. Code

While the department is quite disappointed with the number of certified properties in Wisconsin's Lead-Free/Lead-Safe Registry, 1999 Act 113 provisions serve an important role by providing statewide standards for intervention with lead-poisoned children. The rule, ch. HFS 163, provides precise state standards for lead-free and lead-safe housing.

The Registry standards have been credited with helping some Wisconsin applicants obtain millions of dollars from the U.S. Department of Housing and Urban Development over the past few years to reduce lead hazards in older housing. Sheboygan and Kenosha have current grants totaling approximately $4.5 million that will create approximately 300 lead-safe dwelling units. The City of Milwaukee has $7.5 million in federal grants and the State has a federal grant of $3 million through March 2008. At the current rate of public funding to control lead hazards in privately owned dwellings, Wisconsin is able to reduce the lead hazards in about 1,500 dwelling units per year.

In this report, the Department identifies ways the statutes could be changed to strengthen the state's progress toward eliminating childhood lead poisoning by 2010. The balance of this report provides a detailed perspective on the successes and challenges the department has experienced in implementing specific sections of the Act and a final summary of possible statutory changes.

5. A. Act 113, Section 5 created s. 254.11 (5m), Stats., the definition of "Elevated blood lead level."

Comments: S. 254.11 (5m) could be amended. Section 11 of the Act uses the defined elevated blood lead level as the standard for requiring health department interventions for lead poisoned children. The definition of an elevated blood lead level could be lowered to a single venous blood lead test of 15 or more micrograms of lead per deciliter of blood ($\geq$ 15 μg/dl).

The current definition is complex in that it requires repeat blood lead tests for some children before a child is considered to have a blood lead level requiring intervention. This means that children with one blood lead test of 15 to 19 micrograms per deciliter must wait three months (90 days) before another blood lead test determines whether they are eligible to receive a public health investigation of their dwelling. That means 90 additional days of lead exposure for most of these children. If for some reason, a child does not receive the repeat blood lead test in the required time period, the child may not receive an investigation, but may continue to be exposed to lead on a daily basis.

The definition of an elevated blood lead level could be greatly simplified if it was changed to a single venous blood lead test of 15 or more micrograms of lead per deciliter of blood. In practice, many local health departments, including Milwaukee, which has over 70% of all cases, have already adopted a policy of early intervention to protect children from future blood lead increases. While changing the definition of an elevated blood lead level to a single blood lead level of 15 micrograms per deciliter would increase the number of investigations for some local health departments, this increase in workload is within their capabilities at current funding levels. Although it would be even more protective to require interventions at blood lead levels lower than 15 micrograms per deciliter, such as at 10 micrograms per deciliter, there are not now sufficient resources available to local health departments to support such a change.

5. B. Act 113, Section 11 amended s. 254.166 (1), Stats., the requirement for the department to conduct a lead investigation of a dwelling or premises when a child occupant has an elevated blood lead level.

Comments: No changes identified to s. 254.166 (1), Stats.

Prior to the enactment of 1999 Act 113, this section of the statute had been permissive, "the department may," rather than "the department shall." Act 113 added language that directs the department to conduct lead investigations for children with elevated blood lead levels, "shall conduct a lead investigation of the dwelling," but retained permissive language, "may issue orders," for ordering the removal of lead hazards identified in these dwellings.

The department's contract language for the distribution of GPR local aids to local health departments was revised for calendar year 2001 to be consistent with both the guidelines from the Centers for Disease Control and Prevention and the revised statutory language in chapter 254. Under these contracts, DHFS requires local health departments that receive state funds for lead poisoning prevention to conduct investigations on all children who meet the elevated blood lead level definition. In 2004 over 90% of these cases were investigated within the first 14 days after the health department received the laboratory report, compared to the just over 42% that were investigated within 14 days in 2000. The percent of cases closed annually with no investigation completed has dropped from about 15% in 2000 to less than 4% in 2004.

The statutory change to require the department, and its agent local health departments, to conduct an investigation of lead hazards in homes of children with elevated blood lead levels has resulted in better service for many of Wisconsin's lead poisoned children.

5. C. Act 113, Section 12 amended s. 254.166 (2) (c), Stats., by deleting the language that clarified a lead hazard "may constitute a health hazard." This section allows the department to notify occupants of lead hazards, of results of lead investigations, and actions taken to reduce or eliminate the lead hazards.

Comments: This section has been used with success: however, further revision could be undertaken. A new subsection, 254.166 (2) (f) could be created to read:

> "If an owner does not comply with an order issued under par. (d), the department may cause to be posted in a conspicuous place upon the dwelling or premises a notice of condemnation for human habitation because of the presence of a substantial or eminent lead hazard until such time as the lead hazard is removed and clearance requirements are met."

Although the rate of lead poisoning in Wisconsin continues to decline, a minority of owners still fails to maintain their property and do not act promptly to correct lead hazards even after a child is found to be lead poisoned. An issue of continuing concern is owners who refuse or fail to comply with orders to correct lead hazards when a child has been lead poisoned while continuing to rent, and profit from, a property with known human health hazards.

This possible statutory language would align department authority relating specifically to lead hazards with its authority for generic human health hazards in another section of the statute and with other state regulations. S. 254.59, Stats., requires a local health officer to order abatement,

and, if not abated within 30 days, to "immediately enter upon the property and abate or remove the human health hazard or contract to have the work performed."

The Department of Agriculture Trade and Consumer Protection (DATCP) also has language dealing with hazards in rental housing as codified in ch. ATCP 134, Residential Rental Practices (see Appendix D). S. ATCP 134.04 (2)(b) 4 requires a landlord to disclose to prospective tenants "any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises…" S. ATCP 134.09, further creates the authority for DATCP to condemn rental property and disallow the rental of dwellings that have been placarded and condemned for human habitation or for which orders to raze or rehabilitate under state or local laws or ordinances have been received until all repairs have been made to bring the property into compliance.

Under s. 254.166, Stats., a DHFS order to reduce or eliminate lead hazards may meet the standard of ch. ATCP 134 for condemnation for human habitation until the lead hazards are removed. However, while s. 254.166, Stats., allows the department to take action, including posting a notice on a dwelling of the presence of a lead hazard and issuing orders for the elimination of lead hazards, it does not specifically allow the department to condemn property for human habitation. The language change identified would provide greater flexibility of response for health agencies in cases where human health is compromised by an owner's failure to correct lead-based paint hazards at a property after being ordered to do so by a public health department.

5. D. Act 113, Section 20 repealed s. 254.17, Stats., Lead inspections of rental and leased property. This section of the act repealed the DHFS authority to require that owners of rental property have a lead inspection if the department determines that the dwellings or premises in that class are likely to contain lead hazards based on the age of the dwelling, the condition or location of the dwelling, the age of the occupants or any other appropriate factors.

Comments: Provisions of s. 254.17, Stats. that were repealed, could be restored.

Since Act 113 was enacted in 2000, state and national studies have clearly shown that the age of dwellings is an extremely strong predictor of lead poisoning in an occupant child. This section of the Act withdrew DHFS authority to require evaluations of housing for lead hazards based on predictable risk factors, such as age of housing, and thus weakened the state's ability to protect children.

The department can identify the age and specific locations of housing that presents the greatest risk to children (see Figure 3 and Figure 4),[9] and the children who are at greatest risk (see Figure 5). The data in Figure 5 infers that children residing in housing built before 1950 are five times more likely to be lead poisoned than children living in newer housing. It would, therefore, be possible for the department to identify the highest risk housing and strategically require lead investigations and lead hazard reduction in those properties most likely to place children in harm's way.

[9] Maps by WI county and select cities showing locations of lead poisoning cases are available on the department's lead web site at: dhfs.wisconsin.gov/lead. Click on Wisconsin Lead Poisoning Information, then Maps.

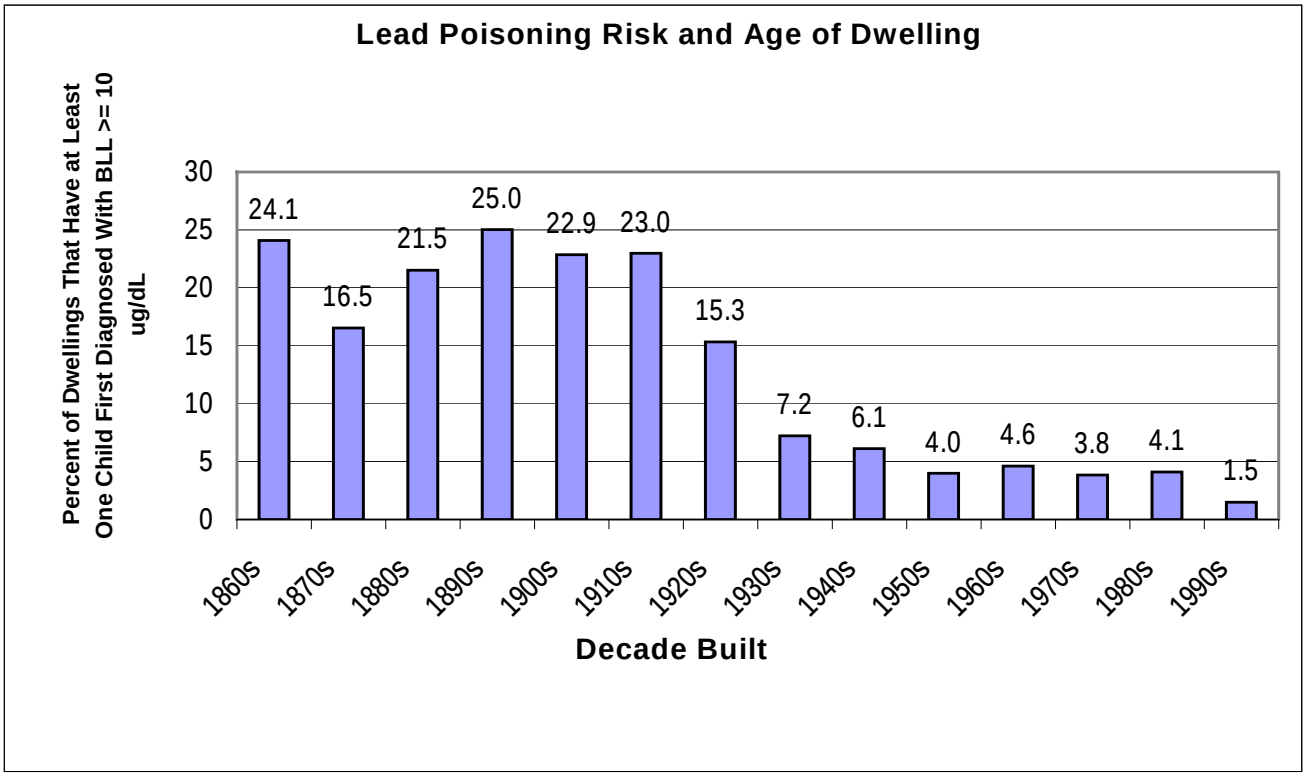

Figure 3: Percent of dwellings constructed by decade that house children first diagnosed with lead poisoning.

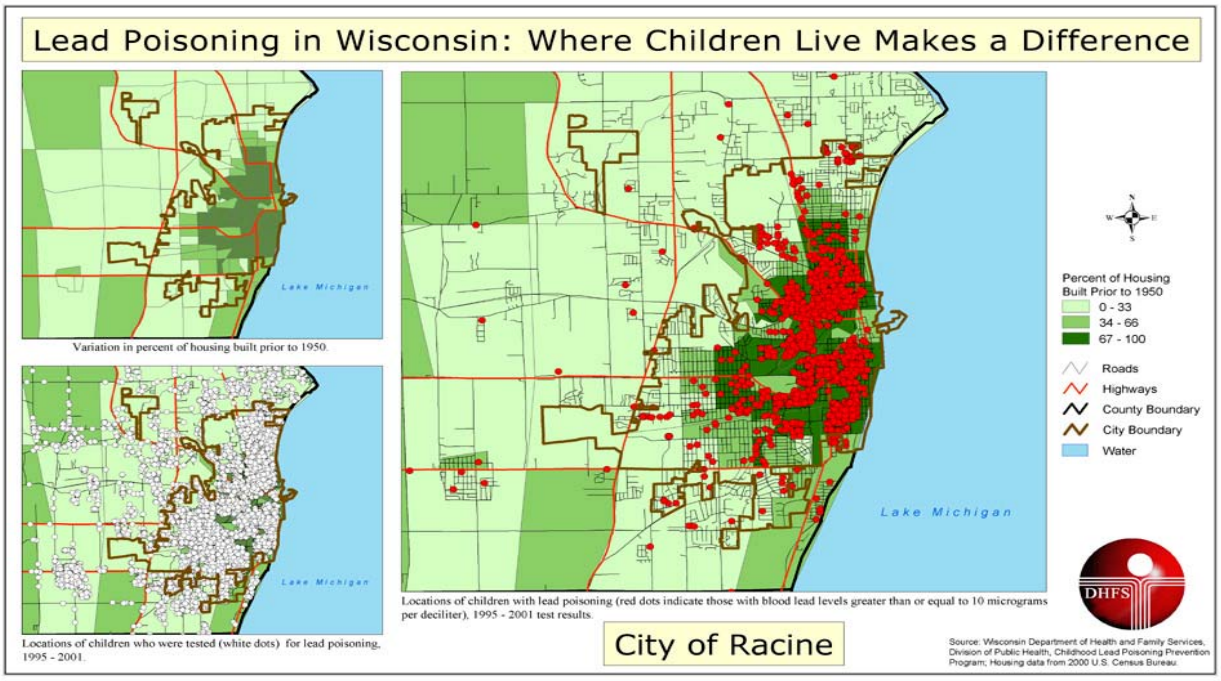

Figure 4: Example map: Blood lead testing results and age of housing.

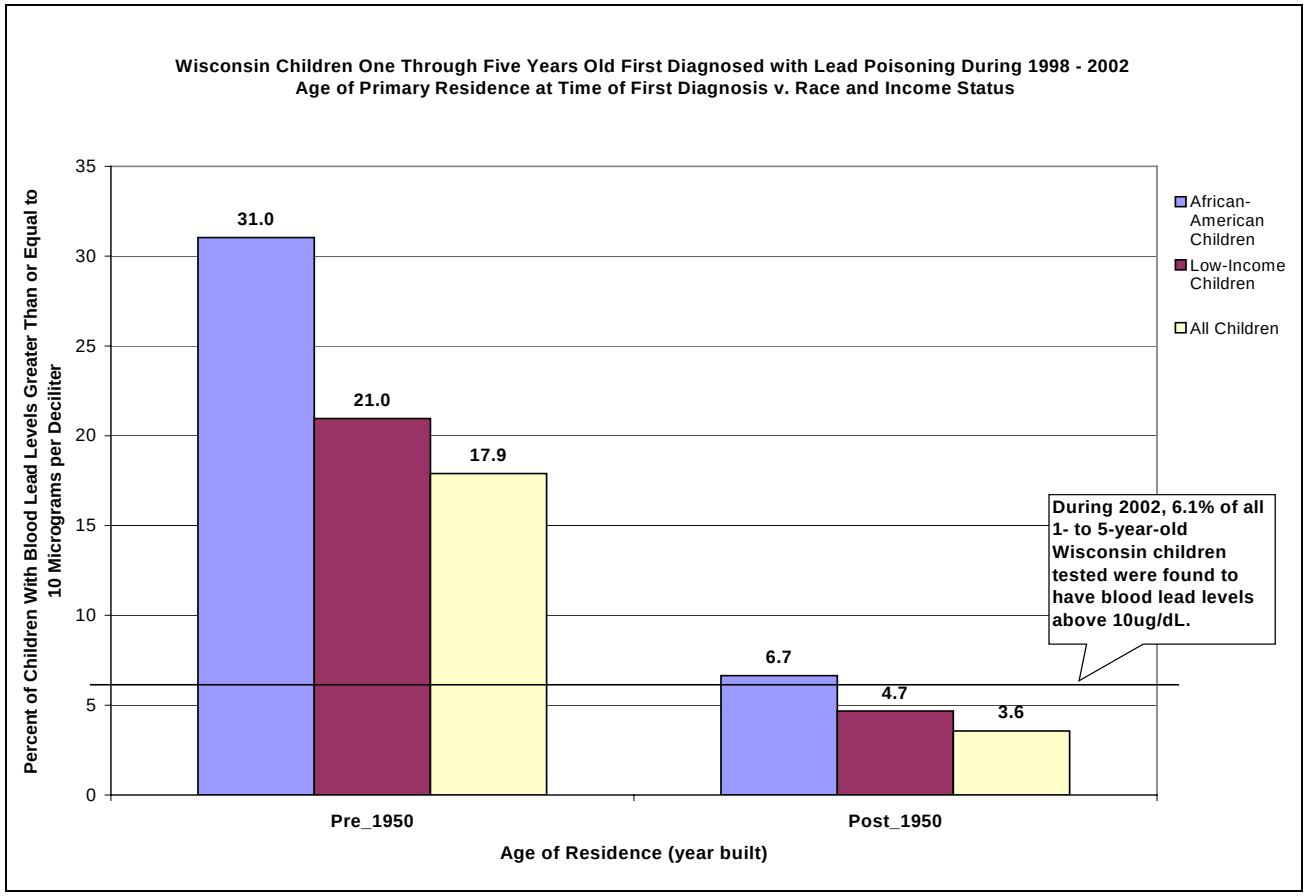

Figure 5: Risk factors for lead poisoning in Wisconsin.

5. E. Act 113, Section 21 created s. 254.171, Stats., Dwellings and units of dwellings where a child has an elevated blood lead level. This section created the requirement for property owners to place the dwelling unit in the Lead-Free/Lead-Safe Registry if the owner is notified by the department or local health department that a child who resides in the dwelling has an elevated blood lead level. This is otherwise called the *mandatory* Registry.

Comments: The department recommends repeal of s. 254.171, Stats., and amending ss. 254.166 (2) (d) and (e) as proposed in AB 100, the Governor's biennial budget bill. An additional possible change is to recreate s. 254.171, Stats. to require property owners to follow orders.

The purpose of the repeal and recreation is to eliminate the *mandatory* Registry and replace it with specific language that requires owners or operators of dwellings or premises to comply with any orders issued under s. 254.166 or s. 254.59, Stats. Currently, s. 254.166, Stats., grants authority to write orders but it does not explicitly direct owners to comply with such department orders.
The department also recommends amending s. 254.166 (2) (d), Stats., to *require*, rather than permit, the department (or a local health department) to issue an order for the elimination of an imminent lead hazard, and s. 254.166 (2) (e), Stats., from "If an order is issued" to "When an order is issued" (by a health department). The request to repeal s. 254.171 and amend s. 254.166 (2) (d) is in the Governor's proposed 2005-2007 biennial budget. (see Appendix E)
S. 254.171, Stats., the mandatory provisions of the Registry, are confusing and duplicative for owners who have complied with their local health department's orders issued under s. 254.166,

Stats. Owners find they must not only comply with the health department's orders, but also with Registry requirements, including paying for a Lead-Free or Lead-Safe investigation by a certified lead professional often costing several hundred dollars. A requirement to comply with one set of orders would be more reasonable and would allow health departments more flexibility and local control.

S. 254.166, Stats., provides health departments with the responsibility and authority to respond to blood lead poisoning cases and the ability to take appropriate actions. S. 254.171, Stats., in practical terms, only adds a layer of regulatory burden on property owners and health departments without clearly adding to the child's protection.

Administering the mandatory provisions of the Registry under s. 254.171, Stats., has placed a fiscal burden on the overall lead program in the Department. Resources were used to develop and implement the lead-free/lead-safe standards, the Registry database, conduct statewide outreach, and administer the mandatory provisions of Registry participation in response to elevated blood lead cases.

Over the past two years, staffing has been decreased from 5.0 full time equivalents to 1.0 full time equivalent because of lack of Registry revenues to support the program. At the same time, considerable resources continued to be used in conducting outreach activities on the Registry and managing the mandatory provisions of the Registry. At the end of SFY04, the Lead Registry project appropriation was closed with an unsupported cash deficit of $611,397. The deficit continues to grow as a result of continuing expenditures and minimal revenues in FY05. In the fall of 2003 the department reported the problem of the deficit to the State Budget Office and noted the need to continue to monitor and assess the program, and possibly modify it in the 05-07 biennium. The department also recommends recreating s. 254.171 to require property owners to explicitly comply with health department orders issued under s. 254.166. Current statute allows orders to be issued for lead hazard reduction work on a premises, but there is no language that requires owners to follow orders. This language would clarify department authority to take enforcement actions when owners ignore or otherwise fail to follow orders.

5. F. Act 113, Section 22 repealed and recreated s. 254.172, Stats., Prevention and control of lead-bearing paint hazards in dwellings and premises.

Comments: No changes identified to this section.

This section replaces more detailed Lead Hazard Reduction language that gave DHFS authority to write rules to, among other things, require owners to eliminate any imminent lead hazard and set a priority-based schedule of classes of dwellings (by dwelling age, location, occupant age) to require owners to undertake lead hazard reduction. Act 113 language grants the department general authority to promulgate rules governing lead hazard reduction that the department determines are consistent with federal law and provides a level of flexibility to the department in promulgating such language. In practice, it is difficult to evaluate the impact of 1999 Act 113 since DHFS did not issue rules under the previous authority and has yet to do so under the revised authority. However, the department believes the Act 113 language provides adequate latitude to ensure the ability to remain consistent with federal regulations in future rules.

5. G. Act 113, Section 23 created s. 254.173, Stats., Immunity provisions. This section encourages property owners to address the problems of lead-based paint hazards by bringing their property into compliance with state standards and, if they do so, to hold them not liable with respect to lead poisoning or lead exposures in the property. The liability protection is conditional on the property having a certificate of lead-free or lead-safe status in effect at the time of the lead poisoning or lead exposure. Immunity provisions are set to sunset in 2008.

Comments: No changes identified.

Immunity was intended to achieve widespread participation in the Registry creating thousands of certified lead-free or lead-safe housing units in Wisconsin and protecting thousands of children from lead hazards in their homes. Registry participation has, in reality, been dismal. It is now clear that immunity alone has not been a sufficient motivation for Registry participation and that the cost of participation appears to exceed the perceived benefits for owners. However, because immunity was a main stimulus for creating the Registry in the first place and addressed property owners' stated concerns regarding their potential liability for lead poisoning cases, there is no particular reason for it to sunset.

5. H. Act 113, Section 24 amended s. 254.174, Stats., Technical advisory committees. This amendment added language that specifically requires representatives on the committee to include "advocates for persons at risk of lead poisoning and a resident of a 1st class city."

Comments: No changes identified.

The purpose of the lead technical advisory committee is to provide consultation to the department on any proposed rules and this amendment guaranteed that important constituencies have an opportunity to participate.

5. I. Act 113, Section 25 repealed s. 254.176 (3) (b), Stats., language limiting certification disciplines and requirements to meeting but not exceeding U.S. Environmental Protection Agency (EPA) regulations.

Comments: This repeal has been a success for the lead certification program. No changes identified.

Because the language limiting Wisconsin to meeting but not exceeding EPA regulations was repealed, Wisconsin was able to incorporate additional lead certification disciplines into its modular training plan that have added flexibility and efficiency for persons conducting lead work. EPA has encouraged states to incorporate lead-safe worker and lead sampling technician disciplines into their certification models, even while federal rule making has lagged behind. Wisconsin was one of the first states to create both of these disciplines, and the very first to create them as the single entry level for all other lead disciplines in their categories.

More than 2,300 persons have taken, at a minimum, the 1-day Lead-Safe Work training course in Wisconsin. Over 1,000 persons are certified in lead hazard reduction as lead-safe workers, lead abatement workers, or lead abatement supervisors. These disciplines either conduct lead-safe maintenance and renovation, lead hazard reduction or lead abatement. Over 385 persons are certified in lead investigation as Lead Sampling Technicians, Lead Inspectors, Lead Hazard

Investigators or Lead Risk Assessors (see Figure 6). These disciplines determine if and where lead hazards exist in housing and provide clearance for lead hazard reduction and renovation projects.

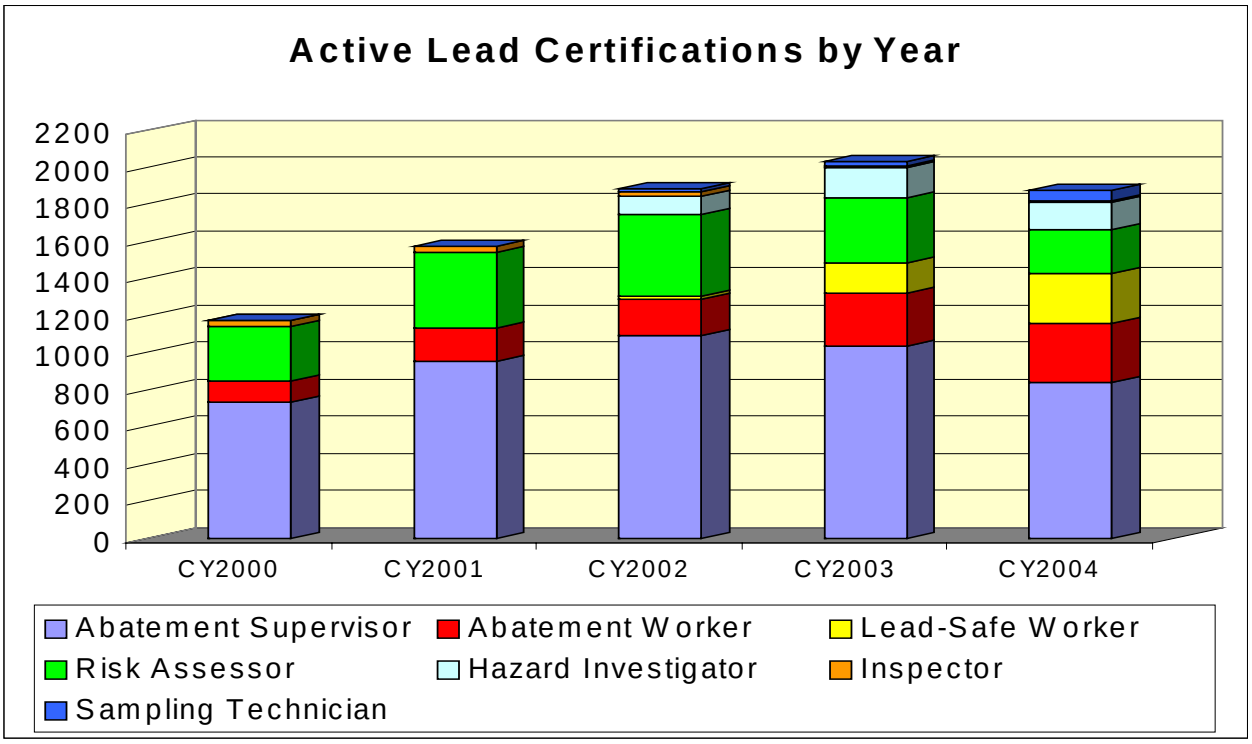

Figure 6: Lead Certifications by Year

5. J. Act 113, Section 26 repealed s. 254.178 (2) (b), Stats., by deleting language that limited training course accreditation and requirements to meeting but not exceeding U.S. EPA regulations.

Comments: The repeal of this language has been a success for the lead training accreditation program. No changes identified.

Because the current federal regulatory language did not constrict the lead program, the department was able to anticipate future directions at the national level and develop a workable training model for Wisconsin and possibly the nation. Wisconsin has the most progressive lead training plan in the nation and is the only state with a truly modular structure. EPA is reviewing Wisconsin's lead training model in detail as it begins the process of revising the national training model and the lead training regulations under 40 CFR 745. EPA has encouraged states to incorporate lead-safe work and lead sampling training courses and certifications, but its own regulations have lagged behind.

Wisconsin's modular training model provides persons with a single entry point for all certifications in a category (see Table 1). The two categories of courses are: the lead hazard reduction courses that lead to certifications as Lead-Safe Workers, Lead Abatement Workers and Lead Abatement Supervisors and the lead investigation courses that lead to certifications as Lead Sampling Technicians, Lead Inspectors, Lead Hazard Investigators and Lead Risk Assessors. Persons may complete only the single entry-level course or the entire series of courses.

Certification Discipline	EPA Training Plan – Training required for Certification	Wisconsin Training Plan – Training required for Certification
Category 1: Lead Hazard Reduction Disciplines		
Lead-Safe Worker	N/A	1-day Lead-Safe Work class
Lead Abatement Worker	2-day Lead Worker Course	1-day Lead-Safe Work *plus* 1-day Lead Abatement Work class
Lead Abatement Supervisor	4-day Lead Supervisor – *(cannot upgrade from worker, must take all 4 days of training)*	1-day Lead-Safe Work *plus* 1-day Lead Abatement Work class *plus* 2-day Lead Abatement Supervision class
Category 2: Lead Investigation Disciplines		
Lead Sampling Technician	N/A	1-day Lead Sampling class
Lead Inspector	3-day Lead Inspector class	1-day Lead Sampling class *plus* 2-day Lead Inspection class
Lead Hazard Investigator	N/A	1-day Lead Sampling class *plus* 2-day Lead Hazard Investigation class
Lead Risk Assessor	3-day Lead Inspector class *plus* 2-day Lead Risk Assessor class	1-day Lead Sampling class *plus* 2-day Lead Inspection class *plus* 2-day Lead Hazard Investigation class (same as EPA 2-day Risk Assessor class)

Table 1: Comparison of Lead Training Plans: State of Wisconsin with U.S. EPA

5. K. Act 113, Section 27 created s. 254.179, Stats., Rules for dwellings and premises.

Comments are provided for each subsection of 254.179, as follows:

5.K.1.a. S. 254.179 (a) – Promulgate by rule standards a premises or dwelling must meet to be certified.

Comments: No changes identified.

It is not possible at this time to determine the effectiveness and appropriateness of the property standards that were codified by rule in preventing lead exposures in children because of the minimal number of properties currently represented in the Registry. A review of the 939 registered dwelling units shows that no children have been reported with elevated blood lead levels while living in registered properties.

5.K.1.b. S. 254.179 (b) – Promulgate by rule procedures for issuing and revoking lead-free or lead-safe certificates.

Comments: No changes identified.

The procedure for issuing lead-free or lead-safe certificates was created as part of the Registry database system. This was done at the request of certified professionals in order to provide an

objective standard for issuing certificates. This system allows professionals to interface directly with the Registry database to enter their property investigation findings, or to submit their paper investigation questionnaires with a small additional fee for data entry by DHFS program staff.

No revocations of lead-free or lead-safe certificates have been required since implementing the Registry. However, rules have been promulgated under s. HFS 163.42 (5), that include the reasons the department may revoke a certificate and the property owners rights to appeal a notice of revocation.

5.K.1.c. S. 254.179 (c) – Promulgate by rule the period of validity of a certificate of lead-free or lead-safe status.

Comments: The department recommends the repeal of ss. 254.179 (c) 2. a., b. and c., Stats., language relating to lead-safe certificates of less than 12 months duration as proposed in AB 100, the Governor's biennial budget bill.

Lead-safe certificates are currently available for 9-month, 1-year, 3-year, 5-year, 10-year or 20-year terms. The department plans to consolidate the number of certificate periods from six to three in order to simplify the Registry standards. The revised validity periods would most likely include a 1 or 3-year, a 5 or 7-year, and a 20-year certificate. The simplified standards would be based on U.S. Department of Housing and Urban Development (HUD) research findings in their recently published longitudinal study.[10] DHFS feels the revised certificate standards and lengths would be as protective for children as the current structure, while also being easier to understand and use.

To date, no property has been registered with certificate duration of less than 12 months (see Figure 7). Property owners have stated that they are not willing to spend the money for a property investigation that will yield such a short-term certificate for their property. The Registry rules can be greatly simplified for users if the less than one-year certificates are eliminated.

5.K.1.d. S. 254.179 (d) – Promulgate by rule a mechanism for creating a registry of all premises…

Comments: No changes identified.

The mechanism for registry data has been successfully implemented. The Registry of certified properties exists in the DHFS database, Wisconsin Asbestos and Lead Database Online (WALDO), and is searchable by the general public at dhfs.wisconsin.gov/lead. However, it will not be a useful tool for prospective renters or buyers until a critical mass of certified properties exist in the Registry. Currently, with fewer than 1,000 dwelling units in 16 communities, it is unlikely that a person searching for a lead-free or lead-safe property will find one in their location.

[10] "Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program, Final Report," prepared for U.S. HUD Office of Healthy Homes and Lead Hazard Control by the National Center for Healthy Homes and the University of Cincinnati Department of Environmental Health, May 1, 2004.

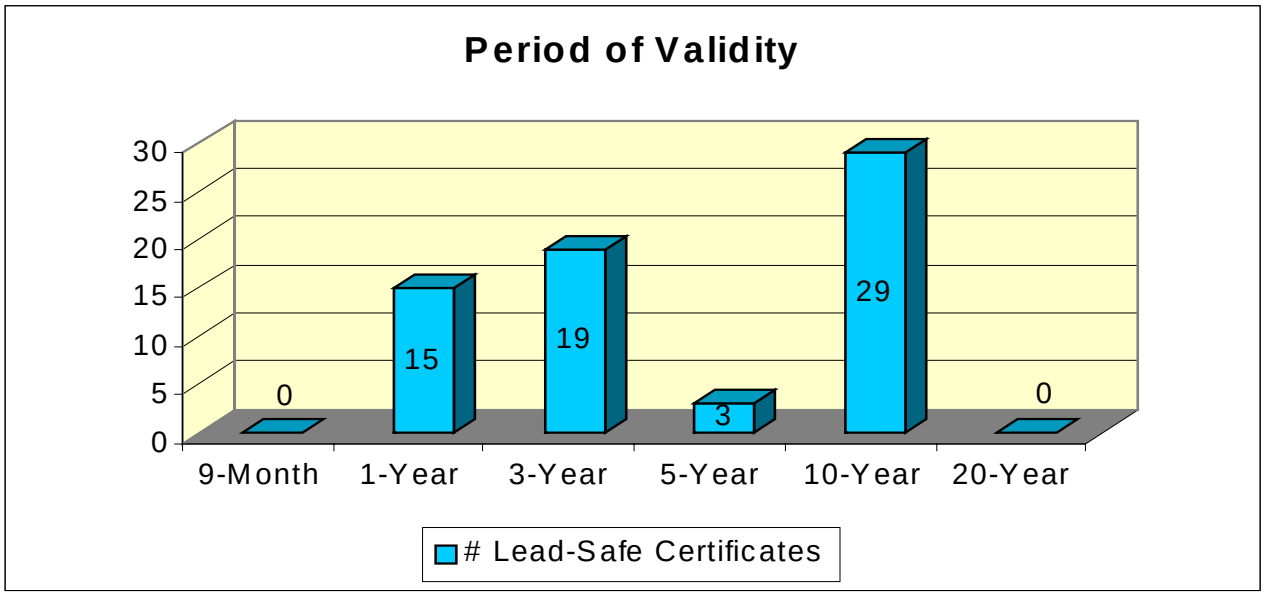

Figure 7: Periods of validity of Lead-Safe Certificates by number of buildings with each duration certificate.

5.K.1.e. S. 254.179 (e) – Promulgate by rule, requirements for a course for property owners…

Comments: No changes identified.

Ch. HFS 163, requires the 1-day lead-safe work course and certification as a lead-safe worker for persons who conduct work that disturbs lead-based paint on properties with lead-safe certificates. This course, and lead-safe worker certification, has been successfully implemented in Wisconsin, partly because the same training is also required under HUD regulations for persons working on federally-funded housing projects.

Tying state requirements to federal requirements has helped ensure a core of well-trained workers for conducting lead-safe renovations and maintenance activities in registered and other older housing. There are currently 285 certified lead-safe workers, 258 certified lead abatement workers, and 541 certified lead abatement supervisors (see Figure 6). In 2004 DHFS received over 1,000 project notices for lead hazard reduction, abatement, and/or lead-safe renovation activities. No paint-disturbing work has been reported for registered lead-safe properties.

5.K.1.f. S. 254.179 (f) – Promulgate by rule interim lead hazard control measures under s. 254.173 (3) (c) 2., temporary immunity provisions

Comments: This section is set to sunset as of September 1, 2005.

Temporary immunity was provided under the Act and rules were written under s. HFS 163.40 (4) to describe the interim control activities required by a property owner during the first 60 days after acquiring a dwelling. To date, there have been no property transfers under the Registry to test these provisions. If immunity is allowed to sunset as of 2008, this subsection will no longer be required.

5.K.2. S. 254.179 (2) – Review and promulgate changes to the rules in order to maintain consistency with federal law.

Comments: No changes identified.

The rules under HFS 163 were revised and published as an emergency rule in January 2003 and as a final rule in July 2003 to comply with federal language by incorporating the EPA definitions of lead-based paint hazard, dust lead hazard, soil lead hazards, and clearance levels for window troughs. Future rule revisions are being studied for changes necessary to maintain consistency with federal law.

5.K.3. S. 254.179 (3) – The department may promulgate rules that set forth safe work practices that shall be followed in the demolition of a building constructed before January 1, 1978, to avoid exposure by persons to lead hazards in the area of the demolition.

Comments: S. 254.179 (3) could be amended to include renovation as well as demolition activities.

The department has not promulgated such rules; however, it would prepare to do so if statutory language was revised to include renovation of high-risk housing. Because many buildings continue to be occupied during renovations, more persons are at risk for lead exposures during renovation activities than during demolitions. A request for language change was submitted to the Law Revision Committee of the Joint Legislative Council for review and was drafted for revision under LRB-0758/P2. The Committee determined that, "…this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy."

5. L. Section 28 created s. 254.18, Stats., Lead hazard reduction in dwellings and premises. This section was created in response to the 1999 Wisconsin Supreme Court decision that ruled that rental property owners have a duty to know if there is deteriorated paint on their properties and a duty to test deteriorated paint when they find it. This section allows paint to be assumed to contain lead rather than test it before conducting lead hazard reduction work.

Comments: This section could be reviewed for possible revisions.

This section allows persons to assume, rather than test for, the presence of lead-based paint before conducting lead hazard reduction activities. The department feels that assuming the presence of lead-based paint, rather than testing the paint, should be allowed before conducting any work that disturbs paint in pre-1978 rental dwelling units where persons may be exposed to lead dust or debris, and that doing so would be more protective for children.

5. M. Section 29 created s. 254.181, Stats., Certificate of lead-free status and certificate of lead-safe status; fees and notification. "…The department shall review the fees every 2 years and adjust the fees to reflect the actual costs."

Comments: This section could be reviewed for possible changes.

This section creates the fees for lead-free and lead-safe certificates and allows for their review and revision. Fees set by statute are $50 for a lead-free certificate and $25 for a lead-safe certificate regardless of the duration of certificate validity or the number of dwelling units covered by the certificate.

Current fees have not been sufficient to support the costs of issuing lead-free and lead-safe certificates. However, participation in the Registry has been so low that the department chose not to raise fees after the first 2 years in order not to further discourage participation. At the current level of participation, fees would have to be set inappropriately high in order to support actual costs and might further erode participation rates.

Registry revenues since program inception are $4,325 in certificate fees and $1,875 in data entry charges, for a total of $6,200. To reduce administrative costs, only one of the original 5.0 full-time equivalent staff positions authorized for the Registry is filled. The lead program as a whole is currently operating with a significant deficit mainly because of the costs of administering the Registry program and the database that was required.

5. N. Section 30 created s. 254.182, Stats., Repayment to the general fund.

Comments: The department has not been able to repay the general fund the amount of $735,000. Program revenue fees from the Registry have been insufficient to make this transfer possible.

5. O. Section 31 created s. 901.055, Stats., Admissibility of results of dust testing for the presence of lead.

Comments: No changes identified.

5. P. Section 32. Nonstatutory provisions.

(6) Rehabilitation of rental property for low-income persons. This subsection requires the Wisconsin Housing and Economic Development Authority to submit a proposal for lead hazard reduction activities for and rehabilitation of rental property for low-income persons in Wisconsin. There is a great need for such assistance for low-income housing in Wisconsin.

(7) Allocation of oil overcharge funds to energy programs. This subsection requires available oil overcharge restitution funds and accrued interest to be used for reduction of lead paint hazards in dwellings. In 2000, the Department of Administration requested the use of these funds for lead abatement activities and was denied by the U.S. Department of Energy. There is still great need for a stable, renewable funding source for the reduction of lead paint hazards in homes.

(8) Report on liability insurance for lead paint hazards. This subsection required the Commissioner of Insurance to review and report by October 1, 2002, on the cost and availability of insurance in the private market for property owner liability coverage for lead-bearing paint hazards.

5. Q. Other possible statutory changes not specifically linked to ACT 113 provisions.

To help ensure appropriate follow-up actions can be taken when responding to a lead poisoned child, several other sections in statute could be amended that were not directly related to Act 113

provisions in order to clarify and ensure sufficient authority for local and state health departments. These possible revisions include:

1) amending s. 254.154 to clarify that local authority includes counties,
2) amending s. 254.59, human health hazards, to specifically include counties as well as municipalities for recovering costs of abatement undertaken when an owner fails to comply,
3) amending s. 254.30 to clearly authorize the department to directly assess forfeitures similar to 254.45 in Subchapter III of ch. 254, Radiation Protection, and,
4) amending s. 254.30 to allow the department to report violations to the counsel for the municipality or county in which a dwelling is located as well as to the county district attorney in which a dwelling or premises is located as is currently allowed by this section.

6. Summary: Possible Statutory Changes to Support the Goal of Eliminating Lead Poisoning in Children

In conclusion, as detailed in Section 5 of this report, following are possible statutory changes to further the goal of eliminating childhood lead poisoning in Wisconsin.

1. Revise 254.11 (5m), to lower the definition of Elevated Blood Lead Level from '20 or more micrograms per 100 millilite3rs of blood as confirmed by one venous blood test, or 15 or more micrograms per 100 milliliters of blood as confirmed by two venous blood tests at least 90 day apart' to '15 or more micrograms per 100 milliliters of blood as confirmed by one venous blood test.'
2. Create s. 254.166 (2) (f), to read, "If an owner does not comply with an order issued under par. (d) the department may cause to be posted in a conspicuous place upon the dwelling or premises a notice of condemnation for human habitation because of the presence of a substantial or eminent lead hazard until such time as the lead hazard is removed and clearance requirements are met."
3. Recreate s. 254.17, the DHFS authority to require that owners of rental property have a lead inspection if the department determines that the dwellings or premises in that class are likely to contain lead hazards based on the age of the dwelling, the condition or location of the dwelling, the age of the occupants or any other appropriate factors.
4. As outlined in Governor Doyle's biennial budget, repeal s. 254.171. The purpose of the repeal is to eliminate the mandatory portion of the Lead Registry.
5. As outlined in Governor Doyle's biennial budget, amend s. 254.166 (2) (d) to require, rather than permit, the department to issue an order that requires reduction or elimination of an imminent lead hazard. Also amend s. 254.166(2)(e) to change the language from "If an order is issued" to "When an order is issued" (by a health department).
6. Recreate s. 254.171. Replace the repealed mandatory Registry provisions with language that requires owners or operators of dwellings or premises to comply with any lead orders issued by a health department.
7. As outlined in the Governor Doyle's biennial budget, repeal ss. 254.179 (c) 2. a.-c., language relating to lead-safe certificates of less than 12 months duration.
8. Amend s. 254.179 (3) to include renovation as well as demolition activities in any rules the department promulgates for required lead-safe work practices for these activities.
9. Revise s. 254.18, lead hazard reduction in dwellings and premises, to allow for lead-based paint to be assumed before any work that disturbs paint in pre-1978 rental dwellings, not only before lead hazard reduction work.

Additional statutory changes, not specific to Act 113 provisions, that would also strengthen the department's ability to protect children by clarifying and enhancing local authority to enforce orders for lead hazard reduction on properties when owners are in noncompliance:

10. Amend s. 254.154 to clarify that local authority includes counties.
11. Amend s. 254.59, human health hazards, to clarify that counties, as municipalities, may recover costs of abatement undertaken when an owner fails to comply.

12. Amend s. 254.30 to clearly authorize the department to directly assess forfeitures similar to 254.45 in Subchapter III of ch. 254, Radiation Protection, as a tool for enforcement of the statutory provisions and rules promulgated under its authority.
13. Amend s. 254.30 to allow the department to report violations to the counsel for the municipality or county in which a dwelling is located as well as to the county district attorney in which a dwelling or premises is located.

Appendix A

Identified Lead-Poisoning Cases in Wisconsin, 1997-2003

Number of Children Tested and Confirmed EBLLs* by Year and BLL Group, Children < 72 Months Old**

Year	Population of Children	Number of Children Tested	Total Confirmed Cases	Confirmed EBLLs as % of Children Tested	Number of Confirmed Children By Highest Blood Lead Level (µg/dL) at or Following Confirmation		
					10-14 µg/dL	15-19 µg/dL	≥20µg/dL
1997	405,409	68,464	7,010	10.24%	3,681	1,794	1,535
1998	403,252	69,590	5,334	7.66%	2,972	1,299	1,063
1999	401,769	80,189	4,567	5.70%	2,581	1,132	854
2000	414,337	79,388	3,910	4.93%	2,325	807	778
2001	415,154	79,225	3,659	4.62%	2,159	823	677
2002	415,154	81,608	3,363	4.12%	2,057	705	601
2003	415,154	81,077	2,820	3.48%	1,669	654	497

* Elevated Blood Lead Level (EBLL) means a level of lead in blood that is twenty or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test (≥ 20 µg/dl), or, fifteen or more micrograms per 100 milliliters of blood (≥ 15 µg/dl), as confirmed by 2 venous blood tests that are performed at least 90 days apart.
Note: 100 milliliters (ml) is equal to 1 deciliter (dl)

** BLL means blood lead level.

Appendix B

Annual Costs of Lead Poisoning in Wisconsin – Worksheet
and
Long-term costs of lead poisoning: How much can New York *save* by stopping lead?

Katrina Smith Korfmacher, PhD
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July 2003

Costs of Lead Poisoning

WHAT LEAD POISONING COSTS WISCONSIN
Cohort year of lead-poisoned children: 2002
Incidence of lead-poisoned children: 2766

Distribution	# of kids >10mcg/dL	% of kids >10mcg/dL
10 to 14	1913	69%
15 to 19	503	18%
20 to 44	330	12%
over 45	20	1%
over 70	4	0%
over 25	175	6%

2002 Incidence Basis:
The first BLL, venous or capillary >=10,
The child could have had previous non-elevated tests.
When an elevated venous test followed a capillary test within 90 days, only the venous value was included.
Note: In 2002 --
549 children had elevated capillary tests with a normal venous test within 90 days
21 children had normal capillary tests with subsequent elevated venous tests within 90 days.

Special Education

cost per year:	20% of kids >25mcg/dL	3 yrs special ed	Total cost
$12,733.00	35	$38,199.00	$1,336,965.00

(20% of poisoned children require special ed for an average of 3 years)

Medical Costs

	Cost to Treat	Total Annual Cost
10 to 14	$56.00	$107,128.00
15 to 19	$56.00	$28,168.00
20 to 45	$783.00	$258,390.00
over 45	$1,018.00	$20,360.00
over 70	$2,626.00	$10,504.00
Total Cost		$424,550.00

Juvenile Justice

# of Juveniles incarcerated	Annual Per Capita Institutionalized Costs	Total Costs	Costs if 10% due to LP
754	$52,271.00	$39,412,334.00	$3,941,233.40

Lost future income

Grosse, et al	Average number IQ points lost per BLL >10mcg/dL:	Number of children affected (>= 10mcg/dL)	Lost earnings per IQ point	Total lost earnings:	Loss of revenue given 6.75% WI Income Tax
3% discount rate	12	2766	$3,720.00	$123,474,240.00	$8,334,511

Estimated total cost for each year's cohort of lead-poisoned children in Wisconsin: $14,037,259.60

This information was developed using Wisconsin data for 2002 and the methodology from *Long-term costs of lead poisoning: How much can New York save by stopping lead?* , 2003, Katrina Smith Korfmacher, PhD, Environmental Health Sciences Center, University of Rochester.

Long-term costs of lead poisoning:
How much can New York *save* by stopping lead?

July 9, 2003 - for questions or comments please contact:

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"As long as attention focuses on the costs of lead-paint abatement and ignores the costs of not abating and as long as people add up the costs of removing paint but not the costs of medical care, compensatory education, and school dropouts, substantial action is unlikely." - Joel Schwartz (1994, p. 105)

INTRODUCTION:

It is easy to be daunted by the potential costs of making New York's housing lead-safe. Estimates range between under $1000 and $40,000 or more per housing unit; national averages are around $7000 per unit. Although it is harder to quantify the benefits of eliminating lead from housing, these benefits are real and, over time, may actually dwarf current remediation costs. A recent study by Landrigan et al. (2002) estimated that the annual costs of environmentally attributable diseases in American children total $54.9 billion, of which the vast majority ($43.4 billion) arise from lead poisoning.[2] By combining medical and economic research, it is possible to reliably estimate some of these benefits. I have outlined the major potential benefits of eliminating lead poisoning under several categories: lost future income, neonatal mortality, health care costs, special education, criminal justice, and the state infrastructure that currently addresses lead poisoning.

Although I have not addressed this issue in my cost estimates, it is essential to remember that the costs of lead poisoning outlined below are borne by all New Yorkers. However, the costs most directly affect populations that can afford them the least. In 2001, 95% of the children who tested above 10 µg/dL in New York City were non-Caucasian (NYC Dept. of Health and Mental Hygiene, 2001). This implies that lead is one of the most significant issues of environmental justice in this state. While average lead poisoning rates in the population have indeed declined in recent years (NY Dept. of Health, 2000), the rate among the poor and minorities could actually be increasing. The publicly available statewide data does not allow us to investigate this possibility. I urge that analyses be conducted to explore the trends in poisoning rates in New York's oldest and poorest neighborhoods, as this is beyond the scope of my present analysis.

Please note that this is NOT a cost-benefit analysis, since I have not considered HOW these reductions in lead poisoning would be achieved and at what cost. Rather, I have asked, "what costs would the state of New York avoid on an annual basis if lead poisoning due to deteriorated housing were eliminated?" I have made these calculations for the year 1999, since that is the most recent year for which NY DOH statistics have been published.

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[1] The author thanks the many people who have commented on this document, especially members of the Rochester Coalition to Prevent Lead Poisoning and Dr. James Campbell. Their assistance has been invaluable. However, the author bears full responsibility for the analysis and data interpretation included below.

[2] Landrigan et al. emphasize that this is a conservative estimate, particularly with respect to lead poisoning, because the costs of special education, criminality, medical follow-up, adult diseases to which lead poisoning may contribute, and environmental remediation are not included. In addition, the calculation is based on the blood lead level of 5 year olds, whereas the average BLL for 2 year olds may be higher. They also note that, by comparison, health costs due to motor vehicle accidents are just over 80 billion per year for the entire population.

BENEFITS ANALYSIS

A. Lost future income

Prior efforts to quantify the impacts of lead poisoning have focused on lost future income. Medical research suggests a strong correlation between EBL and lowered IQ. Economic research shows that lower IQ results in reduced income earned over a person's lifetime. Although this may not in fact be the most significant impact of lead poisoning, it is the best-documented and easiest to quantify. Schwartz (1994) estimates that nearly three-quarters of the quantifiable costs of lead poisoning come from the impact of lowered IQ on earnings potential. Grosse et. al (2002) have recently updated these costs calculations; their estimates are used below.[3]

Table 1a: Potential for increased lifetime earnings

	3% discount rate
Average avoided IQ loss (points)	12
Number of children (0-6) with BLL over 10 in 1999	17,389
Earnings loss/IQ point	$3720
Total annual earnings gain ($)	$776,256,773
NY state gain (10% income tax) ($ per year)	$77,625,677

If we assume an average income tax rate of 10%, these means that NY State is losing nearly $78 million in tax dollars each year from children's earning potential being reduced by lead poisoning. This estimate of benefits that could be gained by eliminating lead poisoning is conservative for reasons discussed in Grosse (2002), including the fact that it does not calculate the effects on children at levels below 10 µg/dL). Recent research implies that, in fact, the rate of IQ loss is higher at these low concentrations (Canfield et al., 2003). In addition, the number of children identified with an elevated blood lead level (over 10) is likely low (see Appendix A).

An alternate means of calculating the lost earning potential was presented by Landrigan et. al. (2002). These authors used the most recently available national average blood lead level of 2.7 µg/dL among 5 year old children. They summarize studies that show the severe impact of lead on reducing IQ at low levels (BLL less than 10). Based on recent research, their estimate assumed that each 1 µg/dL BLL corresponds to a .25 IQ point loss per child, which would result in a 2.39% loss of lifetime earnings. Using a growth rate of 1% and a discount rate of 3%, they calculated the lost earning potential of boys and girls separately in 1999 dollars.

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[3]This calculation makes several assumptions. Based on Grosse et al. (2002), I assume a net present value loss of $3720 per child for each increase of 1 ug/dL. This figure uses a 3% discount rate. I have calculated the benefits that accrue each year, assuming that there were 17,389 0-6 year olds with first-time elevations above 10 µg/dL in 1999. The number of cases of poisoning is based on 1999 data on incidence of blood lead elevations over 10 µg/dL in children under 6 reported by the New York City Department of Health and Mental Hygiene (2001) for New York City and New York Department of Health data (2000) for the rest of the state (See Appendix A). Grosse uses a 'background' level of 2 µg/dL for children in lead-safe housing. I assumed that for children testing over 10 µg/dL, the mean blood lead level was 14 µg/dL (see Appendix A). The benefits in terms of net present value of lifetime earnings per birth cohort (annual benefit) are based on reducing these 17,389 children's blood lead levels by an average of 12 µg/dL to the 'background' level (2 µg/dL) at a benefit of $3720 per child per µg/dL (17,389 * $3720 * 12 = $776,256,773)

Applying Landrigan's national figures to the number of 5 year olds in NY state[4] implies lifetime earning losses of close to $3 billion per year (Table 1b).

Table 1b: Potential for increased lifetime earnings, Landrigan method

	Loss of lifetime earnings	Lifetime earnings	Number of children (5 year olds in 1999)	Total
Boys	1.61%	$881,027	123,942	1,758,059,600
Girls	1.61%	$519,631	123,942	1,036,906,097
Total				2,794,965,697

Thus, population-wide New York state may be losing nearly $3 billion from each birth cohort of children. In other words, the vast majority of earnings loss comes from children who are not identified as lead poisoned, either because their BLL is less than 10 or because they were not tested. In addition, this is probably a conservative method since the actual BLL in New York state is probably higher than the national average of 2.7, because of the relatively high percentage of pre-1940 housing in the state. This alternate method of calculation shows that Table 1a (based on children identified with BLL over 10 μg/dL) may be conservative by nearly a factor of four.

B. Neonatal Mortality

As mentioned above, Schwartz's (1994) influential analysis attributes the majority of childhood lead poisoning reduction benefits to increased earning potential. The other significant cost he monetizes is infant mortality (around 16% of total cost). The EPA included this benefit in its 1996 Regulatory Impact Analysis (EPA, 1996), estimating a $1,163 benefit per housing unit abated through avoided neonatal mortality. A 1999 study found a significant increase in spontaneous abortion rates for women with low to moderate lead exposures (Borja-Aburto, et al. 1999).

However, the regulatory impact analysis for HUD's recent lead paint regulations (US HUD, 1999) argued that 1) the link between neonatal mortality and maternal blood lead levels below 10 μg/dL is tenuous; 2) very few pregnant women have blood lead levels above 10 μg/dL; and 3) for those women with very high lead levels, the cause is likely to be occupational and thus would not be addressed by remediation. For these reasons, neonatal mortality was not quantified as a potential cost in the HUD analysis, nor is it here.

C. Health Care Costs

The direct health care costs of lead poisoning include treatment of severely poisoned children (chelation and associated costs) and follow-up and monitoring of moderately poisoned children (lab testing, physician visits, home inspections, etc.). Very few children are chelated each year, usually when the child's BLL is above 45. For example, in New York City in 1995, 163 of the 2727 children with blood lead levels over 20 were chelated (Green, 1998). The greatest proportion of total health care costs accrue from direct treatment of children poisoned at levels between 10 and 45 (non-chelated children). These costs include repeat testing and, at levels over 20, environmental investigation and hazard control of the children's homes. Appendix A describes how these costs were estimated. The estimates given below for the costs of treating lead poisoned children are derived from Kemper et al. (1998).[5]

[4] According to 2000 US census data, there were 1,239,417 children 0-5 in New York state. To estimate the number of 5 year olds, I divided this figure by 5, then divided by 2 to get the number of boys and girls.

[5] Kemper et al. estimated treatment costs from a variety of published sources in 1996 dollars (See Appendix A). I have assumed all poisoned children received these treatments. However, it is important to note that Markowitz et al. (1999) suggest that as few as 25% of lead-poisoned children receive proper follow-up care.

Table 2: Potential savings due to avoided direct treatment costs

BLL in µg/dL	Number of 0-6 yr olds in NY state in 1999	Cost of follow-up treatment per child (from Kemper, 1998)	Total cost per year
10-14	11502	$55.95	$643,537
15-19	3026	$55.95	$169,305
20-45	2701	$782.6	$2,113,803
45-70	134	$1017.6	$136,358
Over 70	28	$2625.60	$73,517
Total	17,392		$3,136,519

Of this these total costs, the majority of the medical costs are paid for through Medicaid, since a large proportion of the children who are lead-poisoned are on Medicaid.[6] In addition, all of the environmental investigation and hazard remediation costs are paid for by the State Department of Health (based on these estimates, around $959,109 per year). These costs likely underestimate current medical costs for several reasons: 1) the Kemper figures are in 1996 dollars; 2) problems (behavioral, learning, etc.) related to lead poisoning but not directly associated with treatment of lead may result in additional physician visits; 3) as noted above, the data for number of poisonings in the state may be significantly low.

In addition to these immediate costs of treatment, ongoing research suggests a range of additional health effects of lead poisoning (and related medical costs). Adult hypertension (elevated blood pressure, with increased risk of heart attack and stroke) has been linked to a history of childhood lead poisoning (Kim et al., 1996). If this link is quantified, it could result in significant additional cost implications of lead poisoning. However, because of the lack of data, the HUD analysis cites preventing adult hypertension as a "non-quantifiable benefit," along with "improving children's stature, hearing, and vitamin D metabolism" (HUD analysis, p. 3-51). A recent study by Landrigan et al. (2002) also did not include costs of cardiovascular disease because "a preliminary analysis revealed that these costs were probably minor because of the combined effects of a relatively weak correlation between childhood and adult blood pressures, the resulting modes attributable burden of increased cardiovascular disease, and the severe discounting applied to costs that will arise four or more decades after exposure to lead."

Recent studies have linked lead poisoning and osteoporosis (Escribano et al, 1997; Gruber et al. 1997). Another health cost that has not been quantified is the link between childhood lead poisoning and increased dental caries (Moss, 1999). Altogether, such long-term health costs of chronic conditions may dwarf the direct costs of treating lead poisoned children.

Special Education

Medical research strongly supports the link between lead poisoning and impaired neurobehavioral function. In addition to the IQ effect described above, elevated lead levels have been associated with "lower class standing in high school, increased absenteeism, lower vocabulary and grammatical-reasoning scores, poorer hand-eye coordination, longer reactions times and slower finger tapping..." (Needleman et al., 1990). Therefore, lead poisoning likely contributes to children's need for special education.

According to Schwartz (1994), 20% of children with blood lead levels over 25 need special education (assistance from reading teacher, psychologist or other specialist) for an average of 3 years. In 1998, the

[6] According to the U.S. General Accounting Office (1999), "83% of children with BLL>+20 µg/dL are Medicaid enrollees.".

average annual cost of special education was $12,833. Based on these assumptions, eliminating lead poisoning could save the state over $7,724,371 annually in special education costs.[7]

Table 3: Potential reduction in special education costs

Number of children, BLL>25	1,270
20% of children, BLL >25 needing special education for three years	254
Cost of three years of special education	$38,199
Total annual benefit	$9,706,454

This may be a very low estimate, since recent medical research has shown effects on children's ability to learn at levels well below 25 µg/dL. In fact, recent research has detected significant effects on intelligence at below 10 µg/dL (Canfield et al., 2003; Lanphear, 2000). The special education costs in Table 3 are based solely on the likelihood of a learning disability at BLL over 25 µg/dL. No studies have yet been published on whether or not children with blood lead elevations under 25 µg/dL incur significantly more special education costs.

Criminal Justice

Researchers have suggested that lead poisoning may contribute to delinquent behavior and violent crime as a function of the neurobehavioral impacts cited above (Needleman et al., 1996; Nevin, 1999). Given the high societal costs of criminal activity (costs to victims, incarceration of criminals, etc.) eliminating lead poisoning could potentially create significant benefits to society. The majority of these benefits are currently unquantifiable, however a recent study by Needleman makes it possible estimate the extent of lead's contribution to juvenile delinquency. Needleman (2002) found that "adjudicated delinquents were four times more likely to have bone lead concentrations over 25ppm that controls."[8] However, it is difficult to translate bone lead levels into blood lead levels. Therefore, the approach taken here is to assume that 10% of juvenile delinquency may be attributed to lead poisoning. Based on Needlman's work, this appears to be a conservative assumption; however, additional efforts to quantify the relationship between population-wide blood lead levels and juvenile delinquency would be helpful. Applying this 10% assumption to the cost of residential treatment of juveniles alone, savings could range from $12 to 35 million per year.[9]

Table 4: Potential reductions in residential placement of juvenile delinquents

[7] Because the number of children in the state with BLL over 25 was not available, I took the proportion of children with BLL over 10 whose levels are over 25 (based on Monroe County Department of Health database, 1996-2000) to be .073. Multiplying this proportion by the total number of children in NY with BLL over 10 (1,270) I derived the estimate of 254 children with BLL over 25 in the state in 1999.

[8] An earlier abstract of this work indicated that the population attributable risk values range from .11 to .38, depending on race and family income (Needleman 2000). Attributable risk is the additional incidence of delinquency that could be eliminated if lead exposure was eliminated.

[9] These figures are based on the 1998-99 requested budget of the Office of Child and Family Services for "youth facilities" of $123,436,000 (http://www.state.ny.us/dob/archive/989archive/989appd1/ocfs.pdf). However, using the figure of 4813 residential placements statewide (Sickmund and Wan, 2001) at a cost of $80,000 per juvenile per year (personal communications), would yield a total cost of $345,440,000 per year. Thus, the estimates in the table may be low by a factor of two or more. In addition, they do not include the costs of non-residential outcomes for juvenile delinquents.

Attributable risk	Estimated annual benefit based on 1998-99 OCFS budget	Estimated annual benefit based on cost of residential treatment
.10	$12, 343,600	$34,544,000

State Infrastructure for Lead Poisoning

The State of New York subsidizes efforts to educate about, prevent, and respond to cases of childhood lead poisoning. This 'state infrastructure' for childhood lead poisoning would no longer be necessary if lead poisoning were eliminated, although presumably some infrastructure would remain for monitoring, etc. Unfortunately, the costs of this system are very difficult to determine because they are often parts of larger programs and because a large number of entities is involved. The elements of this system are described below and, where possible, cost estimates are given. This infrastructure may be divided into two parts: public health and environmental health.

New York State's Department of Health supports counties' public health programs, including lead poisoning prevention, education, and response. The only part of these monies for which I have an estimate is the supplemental lead poisoning prevention grants, which Ken Boxley of the Department of Health estimates at $8 million per year (personal communication, 2002).

In addition to these public health programs, the state funds environmental health efforts aimed at locating and remediating lead hazards. The figure derived above (see health care costs) for environmental investigations is certainly a very low estimate of the full costs of environmental investigations ($959,105).

Legal liability

Several legal suits have been brought against municipalities in recent years. While New York City has borne the greatest costs due to legal liability for lead issues, other municipalities have been successfully sued in recent years. The settlements to date have not been a significant cost on a statewide basis, however, there is a potential for many more suits to be brought in future years.

SUMMARY

The estimates given above are all conservative - the benefits may in fact be higher in each category. In addition, it is important to note that some of the most costly impacts of lead (including osteoporosis, hypertension, stroke, and neonatal mortality) cannot be quantified at this time.

It would be inappropriate to give a total of these potential benefits because the range of uncertainty is not known and because of the significance of unquantified effects of lead poisoning. However, this table gives a rough sense of the relative magnitude of the various effects which we can currently quantify. It also shows where improved estimates should be sought. I welcome any comments or suggestions for their improvement.

This summary points to the need for additional research on the societal costs of lead poisoning. While recent updates have been made on the effects of IQ loss on earning potential (Landrigan et al., 2002), these costs may not be of much interest to the state and local governments whose policies significantly determine lead poisoning prevention efforts. These entities are much more likely to respond to costs that represent annual budget items for their level of government, such as Medicaid reimbursement for medical costs, juvenile justice systems, and special education. The estimates given for these costs in this paper are likely very conservative. For example, the figure used to calculate special education costs is based on effects of blood lead elevations that are very high by today's standards (over 25). Especially in light of new research showing IQ effects below 10 μg/dL, it is essential that these estimates be updated. Any research that could improve the reliability and completeness of estimating these costs would likely be very useful to making policy arguments for investing in lead poisoning prevention. Indeed, some day it may be possible to conduct a cost-benefit analysis that supports significant societal investment in reducing lead hazards to prevent lead poisoning

Table 5: Summary of the benefits of eliminating lead poisoning in New York State.

Benefit	Estimate of Annual Benefit	Comments
Increased earning potential	$776,256,773	Estimate based on testing data that may significantly underestimate actual number of lead poisoning cases; "Landrigan method" suggests $2.8 billion earnings loss per year.
Neonatal mortality	Unquantified	Difficult to quantify for both epidemiological and ethical reasons
Health care – direct treatment	$3,136,519	Does not include lead-related problems such as behavioral difficulties
Health care – long term effects	Unquantified	Includes hypertension, stroke, and osteoporosis
Special education	$9,706,454	Probably vastly underestimates costs because does not include needs of children with BLL under 25 µg/dL
Juvenile Delinquency	$12, 343,600	Range is $12 to $35 million if one assumes a 10% attributable risk; due to uncertainty in actual costs of residential treatment, may be even higher. Does not include costs other than residential treatment.
Criminal justice	Unquantified	If effects of lead on juvenile delinquency carry through to adult behavior, costs could dwarf the juvenile costs.
State infrastructure	$8,000,000	Rough estimate of costs of grants to counties for lead prevention work.
Legal liability of municipalities	Unquantified	Only a small number of cases have been settled to date; however there is a much larger potential for future cases.

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APPENDIX A: DATA SOURCES

These calculations use incidence data - only newly 'confirmed' cases of poisoning. That is, children who were poisoned in previous years and those for whom there is just one finger stick are excluded (confirmation requires a venous sample or two capillary samples). Although including ALL lead poisoned children would give higher costs estimates, using incidence data allows us to think of the costs calculated as annual additional cost (for example, there is no evidence that a child poisoned during two calendar years will need twice as much special education as one poisoned during one year, so this avoids double-counting children who have elevations over several years).

Data New York City are based on 2001 City Health Department figures included in a 2001 annual report by the New York City Department of Health and Mental Hygiene. I used the incidence data for all children poisoned in 1999 (Figure 1, 8,146) and reduced it based on the data for 2001 (total children poisoned under 18 = 5,638; children under 6 = 4,618) to estimate number of children under 6.

Data through 1999 for the rest of the state have been published by the State DOH (NY DOH, 2000). Neither data set is a complete record of lead-poisoned children (testing rates of 83% in the city (percent of children born in 1998 tested at least once before 3rd birthday) and 62% for the rest of the state for the 1997 cohort) and both provide only aggregate data.

In order to determine average BLL, I looked at several distributions of blood lead level (including New York City and Rochester) and concluded that the average BLL of children who are poisoned (BLL over 10) is around 14 μg/dL.

For several of the calculations, I needed a finer distribution of blood lead levels. Based on Monroe County's data, for which a more detailed distribution was available, I made the following assumptions:

Estimated distribution of BLL among lead poisoned children

	Number of children in Monroe County, 1996-2000	Proportion of children in Monroe county	Projected distribution for New York State in 1999
10 to <15	5839	.66	11,502
15 to <20	1536	.17	3,026
20 to <45	1371	.16	2,701
45 to <70	68	.008	134
Over 70	14	.0016	28
Total	8808		17,391

These assumptions should be updated with the actual distribution of statewide poisoning levels if and when that data becomes available to the public.

Direct (follow-up) health care costs

Kemper et al. (1998)[10] provide a comprehensive overview of costs of follow-up care. Nonetheless, some assumptions were necessary to interpret which of these costs apply to which level of poisoning. The following assumptions were used:

[10] The costs used from Kemper et al. (1999, p. 1206) are as follows: Venipunture ($6.53), Lead assay ($17.42), Nurse-only visit ($32), Physician visit ($80), Environmental investigation and hazard removal ($335), Oral chelation ($235), Intravenous chelation ($1843). Note that an additional visit may not always be necessary, as the child may be visiting the physician's office for other reasons. For consistency with the Kemper et al. model, however, the costs of each additional visit have been included here.

BLL in µg/dL	Follow-up measures and average cost	Total cost per child	Number children in NY	Total cost in New York State in 1999
10 to <15	Diagnostic testing (venipuncture + lead assay = $23.95) One additional visit (nurse: $32)	$55.95	11,502	$643,537
15 to <20	Diagnostic testing (venipuncture + lead assay = $23.95) One additional visit (nurse: $32)	$55.95	3,026	$169,305
20 to <45	Diagnostic testing (venipuncture + lead assay = $23.95, 8 times) Eight additional visits ($32 each) Environmental investigation ($335)	$782.6	2,701	$2,113,803
45 to <70	Diagnostic testing (venipuncture + lead assay = $23.95, 8 times) Eight additional visits ($32 each) Environmental investigation ($335) Oral chelation ($235)	$1017.6	134	$136,358
Over 70	Diagnostic testing (venipuncture + lead assay = $23.95, 8 times) Eight additional visits ($32 each) Environmental investigation ($335) Intravenous chelation ($1843)	$2625.60	28	$73,516
Total			13,839	$3,136,519

Data characteristics

The state data are likely to underestimate the prevalence of lead poisoning (see Green, 1998 for examples of underestimation) for several reasons: they include only new cases, exclude children who did not get a follow-up test, and children who were never tested. By way of comparison, Monroe County data which includes all children (regardless of whether they tested positive for lead in previous years) and all test (not just confirmed) yields a total number of poisoning cases nearly four times the state estimate (based on only new and confirmed cases). This should be taken into account in interpreting the data.

CALCULATOR: WHAT DOES LEAD POISONING COST YOUR STATE?

Numbers given in bold should be inputted by user!!!!

Year: **2000** Incidence (new cases) of children with BLL >10 **10000**

Distribution:

	proportion of kids >10	total number of kids
10 to 14	0.66	6600
15 to 19	0.17	1700.0
20 to 45	0.16	1600
over 45	0.008	80
over 70	0.0016	16
over 25	0.073	730

Special Education cost per year: **12733**

Kids >25	730
20% of kids >25	146
3 yrs special ed	38199
Total cost	4071249420

Medical costs	cost to treat	number of kic	total costs
10 to 14	56	6600	369600
15 to 19	56	1700.0	95200.0
20 to 45	783	1600	1252800
over 45	1018	80	81440
over 70	2626	16	42016
total			1841056

Juvenile Justice

total cost of JJ	**1000000**	
savings assuming 10%	0.1	100000

Lost future income

Grosse et al method: 3% discount rate

Average number IQ points lost by kids with BLL	12
Number of children affected	10000
Lost earnings per IQ point	3720
Total lost earnings:	446400000

Landrigan et al metho % loss incc lifetime inc number of children number of 5 year **100000**

BOYS	0.0161	881027	50,000	709226735
GIRLS	0.0161	519631	50000	418302955
				1127529690

Appendix C

Wisconsin Legislative Council Legal Memorandum No. LM-2000-9

WISCONSIN LEGISLATIVE COUNCIL
LEGAL MEMORANDUM

Recent Changes in Wisconsin Laws Relating to Lead-Bearing Paint Hazards

INTRODUCTION

The provisions of 1999 Wisconsin Act 113 are described in this memorandum. The memorandum is divided into the following sections:

- Legislative findings and purpose;
- Immunity from liability for lead poisoning or lead exposure;
- Notice of a child with elevated blood lead level;
- Rule requirements;
- Department of Health and Family Services (DHFS) lead investigation;
- Sampling and testing;
- Report by Office of the Commissioner of Insurance;
- Reports by DHFS on lead hazard reduction activities;
- Admissibility of lead dust test results;
- Fees; reports to local agencies;
- Funding;
- Proposal on rehabilitation of rental property; and
- Effective dates and initial applicability.

BACKGROUND AND GENERAL DESCRIPTION

1999 Wisconsin Act 113 was introduced by Representatives Tom Sykora and G. Spencer Coggs; cosponsored by Senator Robert Jauch, as 1999 Assembly Bill 806. Assembly Bill 806, with significant modifications, was based on 1999 Senate Bill 232, which was the product of the Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control, chaired by Senator Robert Jauch.

Assembly Bill 806 was amended by both the Assembly and Senate and, as amended, passed both houses of the Legislature in March 2000. The bill was signed into law by Governor Thompson, with a partial veto, on May 8, 2000, as 1999 Wisconsin Act 113. Act 113 was published on May 22, 2000.

Act 113 was enacted to encourage property owners to address the problems associated with lead-bearing paint by bringing their properties into compliance with applicable statewide standards to be developed by DHFS. To so encourage property owners, Act 113 provides property owners with immunity from civil and criminal liability if they obtain either a

certificate of lead-free status or a certificate of lead-safe status for their property. These statewide standards and the restriction on liability are designed to reduce the exposure of children and others to lead-bearing paints, improve the quality of the state's housing stock and make insurance coverage for lead hazards more available.

The DHFS currently administers a comprehensive statewide lead poisoning prevention and treatment program. In promulgating administrative rules governing activities relating to lead poisoning or lead exposure prevention and treatment, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry, health professions and persons who are certified to perform or supervise lead hazard reduction or lead management activities. Cities, villages, towns and other political subdivisions are authorized to enact and enforce ordinances that establish systems of lead poisoning or lead exposure control with the same or higher standards than those specified under the DHFS program.

PROVISIONS OF ACT 113

Legislative Findings and Purpose

Act 113 states that the Legislature finds that the most common cause of childhood lead poisoning is ingestion of lead-contaminated dust and chips from lead-bearing paint and that even low blood lead levels can cause significant nervous system problems for young children. The Act further states that the Legislature encourages property owners to address the problems associated with lead-bearing paint by bringing their properties into compliance with applicable state standards. The Legislature finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property if they meet certain requirements. The Act states that the purpose of these standards and this restriction on liability is to reduce the exposure of children and others to lead-bearing paints, thereby substantially reducing the number of persons who develop lead poisoning or lead exposure. In addition, these standards and this restriction on liability will improve the quality of the state's housing stock and result in greater availability of insurance coverage for lead hazards.

Immunity From Liability for Lead Poisoning or Lead Exposure

The new law provides that a property owner and his or her employeees and agents are immune from civil and criminal liability and may not be subject to agency administrative proceedings (other than for the enforcement of rules relating to lead poisoning promulgated by the DHFS) for their acts or omissions related to lead poisoning or lead exposure, if at the time the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit.

There are five exceptions to this grant of immunity which apply if it is shown by clear and convincing evidence that one of the following has occurred:

a. The owner or his or her employee or agent obtained the certificate by fraud.

b. The owner or his or her employee or agent violated a condition of the certificate.

c. During renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employee or agent created a lead-bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred.

d. The owner or his or her employee or agent failed to respond in a timely manner to notification by a tenant, DHFS or a local

health department that a lead-bearing paint hazard might be present.

e. The lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit other than lead-bearing paint.

The standards that must be met in order to obtain a certificate will be set forth in rules promulgated by DHFS, as discussed below.

Act 113 provides that the grant of immunity cannot be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to enforce its lead poisoning or lead exposure control ordinances. This means that while a property owner only has to meet the statewide standards set by DHFS in order to receive a certificate and obtain immunity from liability, the person may nonetheless be subject to the penalties or injunctive provisions of a local ordinance governing lead poisoning or lead exposure control.

The Act also provides that nothing in subch. II of ch. 254, Stats., other than the immunity provisions, may be interpreted or applied in any manner to impair the right of a person, entity, municipality or other political subdivision to sue for damages or equitable relief.

Temporary immunity is provided to owners and their employees and agents for acts or omissions related to lead poisoning or lead exposure that occur during the first 60 days after the owner acquires a dwelling or unit, unless the poisoning or exposure results from a lead hazard created by the owner, employee or agent. However, this 60-day immunity only applies if the owner obtains a certificate of lead-free status or a certificate of lead-safe status for the dwelling or unit and shows by clear and convincing evidence that the property was in compliance with the standard to obtain a certificate of lead-free or lead-safe status by the end of the 60-day period and that the owner obtained the certificate in a reasonable amount of time following his or her acts to achieve compliance. This temporary immunity does not apply if, during the 60-day period, one of the following applies: (a) the owner receives an order to reduce or eliminate an imminent lead hazard within five days or any other lead hazard within 30 days and fails to comply with the order; or (b) the dwelling or unit is vacant and the owner fails to comply with interim control measures specified by DHFS by rule.

The Act sunsets the provision providing immunity from liability for certified properties seven years after it takes effect and sunsets the 60-day temporary immunity provision four years after it takes effect.

Notice of a Child With Elevated Blood Lead Level

Act 113 provides that if an owner receives written notice from DHFS or a local health department that a child under age six residing in the dwelling or unit has an elevated blood lead level, the owner must obtain a certificate of lead-free status or a certificate of lead-safe status in a timely manner, based on the reasonable availability of lead risk assessors or other certified persons and on the time required for the issuance of a certificate. A certificate of lead-safe status issued under this provision must be for a period of 12 months or more. The Act defines "elevated blood lead level" as a level of lead in the blood that is either 20 or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test, or 15 or more micrograms per 100 milliliters of blood, as confirmed by two venous blood tests performed at least 90 days apart.

Rule Requirements

The Act provides that after reviewing lead-related municipal ordinances and in consultation with DHFS's technical advisory committee, DHFS shall, by use of a research-based methodology, promulgate as rules all of the following:

a. The standards for issuance of a certificate of lead-free status or a certificate of lead-safe status, the procedures by which such certificates may be issued or revoked and the period of validity of the certificates, with the goal of long-term lead hazard reduction. Regarding the period of validity of certificates of lead-safe status, the Act provides that the rules must specify that no more than two successive certificates of lead-safe status that are less than one year in duration may be issued. In addition, the rules must specify that if the person again applies for a certificate of lead-safe status, the certificate must be for at least 12 months. After that, if the person applies for a certificate of lead-safe status of less than 12 months in duration, the person must provide DHFS with a reason for the necessity for issuance of a certificate of that duration. If the person again does so, the person must provide DHFS with clear and convincing evidence of the necessity for issuance of a certificate of that duration.

b. A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free or lead-safe status is issued.

c. The requirements for a course of up to 16 hours that a property owner or his or her employee or agent may complete in order to receive certification of completion and the scope of lead investigation and lead hazard reduction activities that the owner, employee or agent may perform following certification, to the extent consistent with federal law, that are preliminary to activities and standards required to obtain a certificate of lead-free or lead-safe status.

d. The interim lead hazard control measures with which owners of vacant dwellings or units must comply in order to receive temporary immunity as described above.

The DHFS must submit the proposed rules to the Legislative Council Staff no later than the first day of the seventh month after publication of the Act. In submitting the rules, DHFS must include a summary of the differences between the standards developed by DHFS and the standards under a similar ordinance of the City of Milwaukee. Also, DHFS must review these rules by January 1, 2003 and every two years thereafter and promulgate changes to the rules if necessary in order to maintain consistency with federal law.

The Act requires that the membership of DHFS's technical advisory committee on rules include advocates for persons at risk of lead poisoning and a resident of the City of Milwaukee.

DHFS Lead Investigation

Under the Act, if DHFS is notified that a child under age six who occupies a dwelling or premises has an elevated blood lead level, DHFS must conduct a lead investigation of the dwelling or premises or ensure that such an investigation is conducted. The Act defines "lead investigation" as a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media. DHFS must notify the occupant or his or her representative of the results of any lead investigations conducted and any action taken to reduce or eliminate the lead hazard. A certified lead risk assessor or other person certified by DHFS who conducts an investigation must conduct the investigation and issue a report in accordance with DHFS rules and, if the report indicates that the dwelling or premises meets criteria for issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS may promulgate rules governing lead hazard reduction that are consistent with federal law.

Sampling and Testing

Act 113 provides that sampling and testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted, if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead-safe manner.

Report by Office of the Commissioner of Insurance

The Office of the Commissioner of Insurance (OCI) is directed to review the cost and availability of insurance in the private market that provides residential property owners with liability coverage for lead-bearing paint hazards. On the basis of the review, OCI must prepare a report to the Legislature, by October 1, 2002, on whether insurance providing residential property owners with liability coverage for lead-bearing paint hazards is sufficiently affordable and available in the private insurance market.

If OCI determines and reports that such insurance is not either sufficiently affordable or sufficiently available, OCI must submit drafting instructions to the Legislative Reference Bureau for proposed legislation to create a state residential lead liability fund and include this proposed legislation in its 2003-05 biennial budget request.

Reports by DHFS on Lead Hazard Reduction Activities

Act 113 requires DHFS to prepare reports by March 1, 2002, 2003 and 2004, describing specified activities relating to reducing lead-bearing paint hazards in residential property during the previous calendar year. In addition, the Act requires that by March 1, 2005, DHFS must prepare a report evaluating the successes or failures of the Act and rules promulgated under the Act in reducing the incidence of lead poisoning or lead exposure in children. The latter report must also include any statutory changes that DHFS feels are needed to further the goal of reducing the incidence of lead poisoning or lead exposure in children. The reports are to be submitted to the Legislature and the Governor.

Admissibility of Lead Dust Test Results

The Act provides that the results of a test for the presence of lead in dust are not admissible in a civil or criminal action or an administrative proceeding unless the test was conducted by a person certified for this purpose by DHFS.

Fees; Reports to Local Agencies

Act 113 authorizes DHFS to impose a fee of $50 for issuance of a certificate of lead-free status and a fee of $25 for issuance of a certificate of lead-safe status. As passed by the Legislature, Assembly Bill 806 provided that the fees could not exceed the actual costs of issuance of certificates and of maintaining the registry of lead-safe and lead-free properties. However, the Governor vetoed the reference to the registry in order to clarify that the fees collected from issuance of certificates may be used to support ***all*** of DHFS's specified activities, including maintaining the registry and setting the standards for issuance of certificates and the period of validity of the certificates. The DHFS must review the fees every two years and adjust the fees to reflect the actual costs. Also, DHFS must notify local health departments at least quarterly of properties in their jurisdiction that have received the certificates.

Funding

DHFS is also authorized to request a supplement of general purpose revenues (GPR) from the Joint Committee on Finance (JCF) to pay initial costs of establishing a registry of properties that are issued certificates of lead-free or lead-safe status. To request this supplement, DHFS must submit a plan to JCF to expend not

more than $520,000 for fiscal year 2000-01. The Act increases the JCF's program supplements appropriation by $520,000 GPR for fiscal year 2000-01 for this purpose. In addition, the Act provides for an increase in the appropriation to DHFS by $215,000 GPR for fiscal year 2000-01 to provide 5.0 FTE positions on January 1, 2001, for activities relating to certification for the performance of lead paint hazard reduction.

Act 113 requires the Secretary of Administration to transfer to the general fund an amount of funding equivalent to the GPR funding provided in the Act ($735,000), once the secretary determines that sufficient program revenues are available from the fees paid for certificates of lead-free and lead-safe status and lead worker certifications to fund DHFS's ongoing administrative costs for the program.

Act 113 directs DHFS, in submitting its 2001-03 biennial budget request, to submit a proposal, including a request for additional funding, to conduct lead paint hazards outreach and abatement activities.

The Act directs the Secretary of Administration to allocate all available oil overcharge funds that have not been approved for expenditure as of the effective date of the Act and all accruing interest earnings on those funds, for reduction of lead paint hazards in dwellings that is done to allow for, and in conjunction with, energy conservation activities in rental properties owned by persons who are seeking a certificate of lead-free or lead-safe status. In awarding the funds, priority must be given to projects that emphasize comprehensive lead removal plans for rental properties. As of March 7, 2000, it was estimated that there is approximately $350,000 in unobligated, one-time available oil overcharge funds.

Proposal on Rehabilitation of Rental Property

Under the Act, the Wisconsin Housing and Economic Development Authority is required, as part of its 2001-03 biennial budget request, to submit a proposal for lead-hazard reduction activities for, and the rehabilitation of, rental property for low-income persons in Wisconsin.

Effective Dates and Initial Applicability

A number of provisions of Act 113 took effect on May 23, 2000, the day after publication. Several provisions, including those relating to immunity from liability, have a 16-month delayed effective date and will therefore take effect on September 1, 2001. The Act provides that the immunity provisions first apply to lead poisoning or lead exposure that occurs on September 1, 2001.

Copies of 1999 Wisconsin Act 113 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400. In addition, the Act is available on the Legislature's Web site at http://www.legis.state.wi.us.

This memorandum was prepared on August 2, 2000, by ***Pam Shannon, Senior Staff Attorney***.

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Appendix D

ATCP 134, Wis. Admin. Code

Chapter ATCP 134

RESIDENTIAL RENTAL PRACTICES

Note: Chapter Ag 134 was renumbered chapter ATCP 134 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 134.01 Scope and application. This chapter is adopted under authority of s. 100.20, Stats. This chapter applies to the rental of dwelling units located in this state, but does not apply to the rental or occupancy of any of the following:

(1) A dwelling unit operated by a public or private institution if occupancy is incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services.

(2) A dwelling unit occupied by a member of a fraternal or social organization which operates that dwelling unit.

(3) A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest.

(4) A dwelling unit, such as a dwelling unit in a hotel, motel or boarding house, that is being rented only by tourist or transient occupants.

(5) A dwelling unit which the landlord provides free of charge to any person, or which the landlord provides as consideration to a person whom the landlord currently employs to operate or maintain the premises.

(6) A dwelling unit occupied by a tenant who is engaged in commercial agricultural operations on the premises.

(7) A dwelling unit owned and operated by government, or a subdivision or agency of government.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; am. (intro.), (1) to (6), Register, December, 1998, No. 516, eff. 1–1–99; am. (7), Register, June, 1999, No. 522, eff. 7–1–99.

ATCP 134.02 Definitions. **(1)** "Building and housing codes" means laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.

(1m) "Consumer credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. ATCP 125.01 (1) and (7).

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord. "Earnest money deposit" does not include a fee which a landlord charges for a credit check in compliance with s. ATCP 134.05 (3).

(5) "Landlord" means the owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them.

(6) "Lease" means a lease as defined in s. 704.01 (1), Stats.

(7) "Owner" means one or more persons, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.

(8) "Person" means an individual, partnership, corporation, association, estate, trust, and any other legal or business entity.

(9) "Premises" means a dwelling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

(10) "Rental agreement" means an oral or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

Note: By approving an individual as a prospective tenant, a landlord does not necessarily enter into a "rental agreement" with that individual, or vice–versa. A "rental agreement: (creating a tenancy interest in real estate) arises only after the parties agree on the essential terms of tenancy, including the specific dwelling unit which the tenant will occupy and the amount of rent which the tenant will pay for that dwelling unit.

(11) "Security deposit" means the total of all payments and deposits given by a tenant to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of 1 month's prepaid rent.

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriff's execution of a judicial writ of restitution issued under s. 799.44, Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

(13) "Tenancy" means occupancy, or a right to present occupancy under a rental agreement, and includes periodic tenancies and tenancies at will. The term does not include the occupancy of a dwelling unit without consent of the landlord after expiration of a lease or termination of tenancy under ch. 704, Stats.

(14) "Tourist or transient occupants" means tourists or other persons who occupy a dwelling unit for less than 60 days while traveling away from their permanent place of residence.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; am. (2), Register, February, 1987, No. 374, eff. 3–1–87; correction in (12) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1993, No. 448; cr. (1m), (1r) and (14), am. (3) and (10), r. (4), Register, December, 1998, No. 516, eff. 1–1–99.

ATCP 134.03 Rental agreements and receipts. **(1)** COPIES OF RENTAL AGREEMENTS, RULES. Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection

before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

(2) RECEIPTS FOR TENANT PAYMENTS. (a) Immediately upon accepting any earnest money or security deposit, the landlord shall provide the tenant or prospective tenant with a written receipt for the deposit, stating the nature of the deposit and its amount. A receipt is not required where payment is made by check bearing a notation describing the purpose for which it was given, unless requested by the tenant.

(b) If a tenant pays rent in cash, the landlord upon receiving the cash payment shall provide the tenant with a written receipt stating the nature and amount of the payment. A landlord is not required to provide a receipt for rent payments made by check.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; renum. (2) to be (2) (a), cr. (2) (b), Register, December, 1998, No. 516, eff. 1–1–99.

ATCP 134.04 Disclosure requirements. (1) IDENTIFICATION OF LANDLORD OR AUTHORIZED AGENTS. (a) The landlord shall, except as provided under par. (c), disclose to the tenant in writing, at or before the time a rental agreement is entered into, the name and address of:

1. The person or persons authorized to collect or receive rent and manage and maintain the premises, and who can readily be contacted by the tenant; and

2. The owner of the premises or other person authorized to accept service of legal process and other notices and demands on behalf of the owner. The address disclosed under this subdivision shall be an address within the state at which service of process can be made in person.

(b) A landlord shall keep tenants informed of changes, if any, in the information required under par. (a). The landlord shall mail or deliver written notice of each change within 10 business days after the change occurs.

(c) This subsection does not apply to an owner–occupied structure containing no more than 4 dwelling units.

(2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:

(a) All uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises. Disclosure shall be made by exhibiting to the prospective tenant those portions of the building and housing code notices or orders which have not been fully complied with. Code violations shall not be considered corrected until their correction has been reported to code enforcement authorities.

(b) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection, whether or not notice has been received from code enforcement authorities:

1. The dwelling unit lacks hot or cold running water.

2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature, in all living areas of the dwelling unit, of at least 67° F (19° C) during all seasons of the year in which the dwelling unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.

3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.

4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

5. The dwelling unit is not served by plumbing facilities in good operating condition.

6. The dwelling unit is not served by sewage disposal facilities in good operating condition.

(3) UTILITY CHARGES. If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.

Note: A sample form which landlords may use to make the disclosures required under s. ATCP 134.04 is contained in the department publication, "Landlords and Tenants — The Wisconsin Way." You may obtain a copy of this publication by calling the department's toll–free Consumer Hotline, 1–800–422–7128, or by sending a written request to:

Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708–8911

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; am. (1) (b), (2) (b) 1. and 2., cr. (2) (b) 5. and 6., Register, December, 1998, No. 516, eff. 1–1–99.

ATCP 134.05 Earnest money deposits and credit check fees. (1) ACCEPTING AN EARNEST MONEY DEPOSIT. A landlord may not accept an earnest money deposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which that applicant is being considered for tenancy.

Note: A credit check fee authorized under sub. (4) is not an "earnest money deposit" or a "security deposit." See definition of "earnest money deposit" under s. ATCP 134.02(3).

(2) REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT. (a) A landlord who receives an earnest money deposit from a rental applicant shall send the full deposit to the applicant by first–class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:

1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.

2. The applicant withdraws the rental application before the landlord accepts that application.

3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.

(b) A landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:

1. Apply the earnest money deposit as rent or as a security deposit.

2. Return the earnest money deposit to the tenant.

(c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under par. (a) or (b) merely by accepting a partial payment or credit of that amount.

(3) WITHHOLDING AN EARNEST MONEY DEPOSIT. (a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.

(b) A landlord may withhold from an earnest money deposit, under par. (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into a rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

Note: See Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits. The same method of computing a tenant's damages may apply to violations related to earnest money deposits.

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to $20, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests a consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

Note: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; reprinted to correct error in (1) (a), Register, March, 1984, No.339; r. and recr., Register, December, 1998, No 516, eff. 1–1–99.

ATCP 134.06 Security deposits. (1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES. (a) Before a landlord accepts a security deposit, or converts an earnest money deposit to a security deposit under s. ATCP 134.05, the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified deadline date which is not less than 7 days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(b) If a tenant makes a request under par. (a) 2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired. The landlord shall provide the list within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(2) RETURNING SECURITY DEPOSITS. (a) Within 21 days after a tenant surrenders the rental premises, the landlord shall deliver or mail to the tenant the full amount of any security deposit held by the landlord, less any amounts properly withheld by the landlord under sub. (3).

Note: A rent payment in excess of one month's prepaid rent is considered a "security deposit" as defined under s. ATCP 134.02 (11). This chapter does not prevent a landlord from collecting more than one month's prepaid rent. However, If the landlord holds any rent prepayment in excess of one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the landlord must treat that excess as a "security deposit" under sub. (2).

Note: See Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits and earnest money deposits.

(b) A tenant surrenders the premises under par. (a) on the last day of tenancy provided under the rental agreement, except that:

1. If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.

2. If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.

3. If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

(c) If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

(d) If a landlord returns a security deposit in the form of a check, draft or money order, the landlord shall make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless the tenants designate a payee in writing.

(e) A tenant does not waive his or her right to the full amount owed under par. (a) merely by accepting a partial payment of that amount.

(3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS. (a) A landlord may withhold from a tenant's security deposit only for the following:

1. Tenant damage, waste or neglect of the premises.

2. Unpaid rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

3. Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

4. Payment which the tenant owes for direct utility service provided by a government–owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

5. Unpaid mobile home parking fees which a local unit of government has assessed against the tenant under s. 66.0435 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

6. Other reasons authorized in the rental agreement according to par. (b).

(b) A rental agreement may include one or more nonstandard rental provisions which authorize a landlord to withhold from a tenant's security deposit for reasons not identified under par. (a). The landlord shall include the nonstandard provisions, if any, in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS"** which the landlord provides to the tenant. The landlord shall specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre–printed.

(c) This subsection does not authorize a landlord to withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Note: For example, a landlord may not withhold from tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse.

(4) SECURITY DEPOSIT WITHHOLDING; STATEMENT OF CLAIMS. (a) If any portion of a security deposit is withheld by a landlord, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim.

(b) No landlord may intentionally misrepresent or falsify any claim against a security deposit, including the cost of repairs, or

withhold any portion of a security deposit pursuant to an intentionally falsified claim.

(5) TENANT FAILURE TO LEAVE FORWARDING ADDRESS. A landlord who has otherwise complied with this section shall not be considered in violation solely because the postal service has been unable to complete mail delivery to the person addressed. This subsection does not affect any other rights that a tenant may have under law to the return of a security deposit.

Note: "Deliver" includes delivery by an agent of the landlord such as a private courier service.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; r. and recr. (1) to (3), Register, December, 1998, No. 516, eff. 1–1–99; correction in (1) (a) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522; **correction in (3) (a) 5. made under s. 13.93 (2m) (b) 7., Stats., Register October 2004 No. 586.**

ATCP 134.07 Promises to repair. (1) DATE OF COMPLETION. Every promise or representation made by a landlord to a tenant or prospective tenant to the effect that the dwelling unit or any other portion of the premises, including furnishings or facilities, will be cleaned, repaired or otherwise improved by the landlord shall specify the date or time period on or within which the cleaning, repairs or improvements are to be completed.

(2) INITIAL PROMISES IN WRITING. All promises made before the initial rental agreement shall be in writing with a copy furnished to the tenant.

(3) PERFORMANCE; UNAVOIDABLE DELAYS. No landlord shall fail to complete the promised cleaning, repairs or improvements on the date or within the time period represented under sub. (1), unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or other causes beyond the landlord's control. The landlord shall give timely notice to the tenant of reasons beyond the landlord's control for any delay in performance, and stating when the cleaning, repairs or improvements will be completed.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80.

ATCP 134.08 Prohibited rental agreement provisions. No rental agreement may:

(1) Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799, Stats.

(2) Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport to waive the landlord's obligation to mitigate damages as provided under s. 704.29, Stats.

(3) Require payment, by the tenant, of attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent the recovery of costs or attorney's fees by a landlord or tenant pursuant to a court order under ch. 799 or 814, Stats.

(4) Authorize the landlord or any agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.

(5) Relieve, or purport to relieve the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. This does not affect ordinary maintenance obligations assumed by a tenant under a rental agreement, in accordance with sub. (7) and s. 704.07, Stats.

(6) Impose, or purport to impose liability on a tenant for:

(a) Personal injury arising from causes clearly beyond the tenant's control.

(b) Property damage caused by natural disasters, or by persons other than the tenant or the tenant's guests or invitees. This does not affect ordinary maintenance obligations assumed by a tenant under the rental agreement, in accordance with sub. (7) and s. 704.07, Stats.

(7) Waive any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; correction in (1) and (3) made under s. 13.93 (2m), (b) 7., Stats., Register, August, 1990, No. 416; am. (7), Register, December, 1998, No. 516, eff. 1–1–99.

ATCP 134.09 Prohibited practices. (1) ADVERTISING OR RENTAL OF CONDEMNED PREMISES. No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze, or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.

(2) UNAUTHORIZED ENTRY. (a) Except as provided under par. (b) or (c), no landlord may do any of the following:

1. Enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

2. Enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry, consents to a shorter time period.

(b) Paragraph (a) does not apply to an entry if any of the following applies:

1. The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.

2. A health or safety emergency exists.

3. The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

(c) A rental agreement may include a nonstandard rental provision authorizing a landlord to enter a tenant's dwelling unit at reasonable times, under circumstances not authorized under par. (a) or (b). The landlord shall include the nonstandard provision, if any, in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS"** which the landlord provides to the tenant. The landlord shall specifically identify and discuss the nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials the nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre–printed.

(d) No landlord may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, and identifying himself or herself upon request.

Note: For example, a landlord may announce his or her presence by knocking or ringing the doorbell. If anyone is present in the dwelling unit, the landlord must then identify himself or herself upon request.

(3) AUTOMATIC LEASE RENEWAL WITHOUT NOTICE. No landlord shall enforce, or attempt to enforce, an automatic renewal or extension provision in any lease unless, as provided under s. 704.15, Stats., the tenant was given separate written notice of the pending automatic renewal or extension at least 15 days, but no more than 30 days before its stated effective date.

(4) CONFISCATING PERSONAL PROPERTY. (a) No landlord may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property, except as authorized under s. 704.05 (5), Stats., or a written lien agreement between the landlord and tenant.

(b) A lien agreement under par. (a), if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the lien agreement in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS"** which the landlord provides to the tenant. The landlord shall specifically identify and discuss the lien agreement with the tenant before the tenant enters into any rental agreement with the landlord. The lien agreement is not effective unless signed or initialed by the tenant.

Note: See s. 704.11, Stats.

(5) RETALIATORY EVICTION. No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit, in retaliation against a tenant because the tenant has:

(a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or

(b) Joined or attempted to organize a tenant's union or association; or

(c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

(6) FAILURE TO DELIVER POSSESSION. No landlord shall fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the landlord is unable to deliver possession because of circumstances beyond the landlord's control.

(7) SELF-HELP EVICTION. No landlord may exclude, forcibly evict or constructively evict a tenant from a dwelling unit, other than by an eviction procedure specified under ch. 799, Stats.

(8) LATE RENT FEES AND PENALTIES. (a) No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.

(b) Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant.

(c) No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

(9) MISREPRESENTATIONS. (a) No landlord may do any of the following for the purpose of inducing any person to enter into a rental agreement:

1. Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.

2. Misrepresent the amount of rent or non-rent charges to be paid by the tenant.

3. Fail to disclose, in connection with any representation of rent amount, the existence of any non-rent charges which will increase the total amount payable by the tenant during tenancy.

(b) No landlord may misrepresent to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Note: Paragraph (b) prohibits "bait and switch" rental practices by landlords. See also s. 100.18(9), Stats.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80; am. (2) and (4), Register, December, 1998, No. 516, eff. 1-1-99.

ATCP 134.10 Effect of rules on local ordinances. **(1)** This chapter does not prohibit or nullify any local government ordinance with which it is not in direct conflict as provided in sub. (2).

(2) In the event of any direct conflict between this chapter and any local government ordinance, such that compliance with one can only be achieved by violating the other, this chapter shall be controlling.

(3) Compliance with local government ordinances shall not relieve any person from the duty of complying with this chapter.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Appendix E

Provision from AB 100
Revising Chapter 254, State Statutes

guardianship, or adoption assistance payments by reducing future payments. The bill also permits DHFS to specify by rule other methods for recovering those payments.

Under current law, $340,000 in federal TANF block grant moneys is transferred from DWD to the Child Abuse and Neglect Prevention Board (CANPB) in each fiscal year. This bill eliminates this transfer and instead appropriates general purpose revenues to the CANPB to award grants to organizations for the establishment of child abuse and neglect prevention programs, early childhood family education centers, and right from the start projects.

Under current law, the Office of Justice Assistance in DOA provides $185,000 annually to DHFS for grants for children's community programs, including grants to the Career Youth Development Center in Milwaukee, the Milwaukee Police Athletic League, court-appointed special advocate programs, and the Children's Safe House Child Care Program in Kenosha County. This bill eliminates these grants.

HEALTH

Under current law, DHFS must establish minimum standards for, register, and otherwise regulate sanitarians, who apply environmental control measures under the public health laws to prevent and control preventable diseases. This bill transfers the duty to regulate sanitarians from DHFS to DRL.

Under current law if DHFS is notified that a child under six years of age has an elevated blood lead level, DHFS must ensure that an investigation is conducted of the dwelling where the child resides and any educational or child care facility the child attends. DHFS may investigate a dwelling or educational or child care facility if a child under six years of age who resides in the dwelling or attends the facility has blood lead poisoning or lead exposure. If DHFS determines that a lead hazard is present in the dwelling or educational or child care facility, DHFS may take a variety of actions, including, notifying the owner or ordering the owner to reduce or eliminate the hazard. If DHFS notifies an owner of a dwelling that a child under six years of age who resides in the dwelling has an elevated blood lead level, the owner must obtain either a certificate of lead-free status or a certificate of lead-safe status for the dwelling. DHFS may not authorize the issuance of successive certificates of lead-safe status valid for less than 12 months unless the applicant shows a special need for such a certificate. DHFS must maintain a statewide registry of all issued certificates of lead-free or lead-safe status.

This bill provides that if DHFS determines that a lead hazard is present in a child's dwelling or in an educational or child care facility, the local health department must issue, and DHFS may issue, an order requiring the owner of the premises to reduce or eliminate the lead hazard. The bill eliminates the requirement that the owner of a dwelling obtain a certificate of lead-free or lead-safe status if DHFS notifies the owner that a child under six years of age who resides in the dwelling has an elevated blood lead level.

Under current law, DHFS funds certain preventive health care services for low-income, underinsured, and uninsured women under the Well-Woman Program. Current law requires that DHFS charge women whose income exceeds 150 percent

financial, medical, legal, social and pastoral services; counseling and therapy; homecare services and supplies; advocacy; and case management services. These services shall include early intervention services. The department shall also award not more than $74,000 in each year from the appropriation under s. 20.435 (7) (md) for the services under this subdivision. The state share of payment for case management services that are provided under s. 49.45 (25) (be) to recipients of medical assistance shall be paid from the appropriation under s. 20.435 (5) (am).

SECTION 2134. 254.15 (1) of the statutes is amended to read:

254.15 **(1)** Develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that includes lead poisoning or lead exposure prevention grants under s. 254.151; any childhood lead poisoning screening requirement under rules promulgated under ss. 254.158 and 254.162; any requirements regarding care coordination and follow–up for children with lead poisoning or lead exposure required under rules promulgated under s. 254.164; ~~departmental~~ responses to reports of lead poisoning or lead exposure under s. 254.166; any lead investigation requirements under rules promulgated under ss. 254.167; any lead inspection requirements under rules promulgated under 254.168; any lead hazard reduction requirements under rules promulgated under s. 254.172; certification, accreditation and approval requirements under ss. 254.176 and 254.178; any certification requirements and procedures under rules promulgated under s. 254.179; and any fees imposed under s. 254.181.

SECTION 2135. 254.162 (1) (c) of the statutes is amended to read:

254.162 **(1)** (c) Day care providers certified under s. ~~48.651~~ 49.156 and day care centers licensed under s. ~~48.65~~ 49.98, provisionally licensed under s. ~~48.65~~ 49.99, or established or contracted for under s. 120.13 (14).

SECTION 2136. 254.166 (title) of the statutes is amended to read:

254.166 (title) ~~**Departmental response**~~ **Response to reports of lead poisoning or lead exposure.**

SECTION 2137. 254.166 (2) (d) of the statutes is amended to read:

254.166 **(2)** (d) Notify the owner of the dwelling or premises of the presence of a lead hazard. ~~The~~

(2m) If the department determines that a lead hazard is present in any dwelling or premises, the local health department shall and the department may issue an order that requires reduction or elimination of an imminent lead hazard within 5 days after the order's issuance and reduction or elimination of other lead hazards within 30 days after the order's issuance, except that, for orders that are issued between October 1 and May 1 and that relate only to exterior lead hazards that are not imminent lead hazards, the order may require elimination or reduction of the lead hazard no earlier than the June 1 immediately following the order's issuance. If the ~~department~~ agency that issued the order determines that the owner has good cause for not complying with the order within the 5–day or 30–day time period, ~~the department~~ the agency may extend the time period within which the owner is required to comply with the order. The failure to comply with ~~the department's~~ an order within the time prescribed or as extended ~~by the department~~ shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the time period expires. If an order to conduct lead hazard reduction is issued by the department or by a local health department and if the owner of the dwelling or premises complies with that order, there is a rebuttable presumption that the owner of the dwelling or premises has exercised reasonable care with respect to lead poisoning or lead exposure caused, after the order has been

complied with, by lead hazards covered by the order, except that with respect to interim control activities the rebuttable presumption continues only for the period for which the interim control activity is reasonably expected to reduce or eliminate the lead hazard.

SECTION 2138. 254.166 (2) (e) of the statutes is renumbered 254.166 (2r) and amended to read:

254.166 **(2r)** ~~If an order is issued under par. (d),~~ The department may conduct or require a certified lead risk assessor or other person certified under s. 254.176 to conduct a lead investigation, a check of work completed, and dust tests for the presence of hazardous levels of lead to ensure compliance with ~~the~~ an order issued under sub. (2m).

SECTION 2139. 254.168 (4) of the statutes is amended to read:

254.168 **(4)** A day care provider certified under s. ~~48.651~~ 49.156.

SECTION 2140. 254.168 (5) of the statutes is amended to read:

254.168 **(5)** A day care center licensed under s. ~~48.65~~ 49.98, provisionally licensed under s. ~~48.65~~ 49.99, or established or contracted for under s. 120.13 (14).

SECTION 2141. 254.171 of the statutes is repealed.

SECTION 2142. 254.173 (3) (c) 1. of the statutes, as affected by 1999 Wisconsin Act 113, is amended to read:

254.173 **(3)** (c) 1 The owner receives an order under s. 254.166 ~~(2) (d)~~ (2m) and fails to comply with the order.

SECTION 2143. 254.179 (1) (c) 2. (intro.) of the statutes is amended to read:

254.179 **(1)** (c) 2. (intro.) The standards limiting the length of validity of a certificate of lead–safe status, including the condition of a premises, dwelling, or unit of a dwelling, the type of lead hazard reduction activity that was performed, if any,

and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling, or unit of the dwelling is not safe from lead-bearing paint hazards. The rules shall specify that the face of the certificate shall indicate the certificate's length of validity. ~~The rules shall further specify that applications for certificates of lead-safe status for identical premises may be made only as follows:~~

SECTION 2144. 254.179 (1) (c) 2. a., b. and c. of the statutes are repealed.

SECTION 2145. 254.911 (1) of the statutes is amended to read:

254.911 **(1)** "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

SECTION 2146. 255.06 (2) (intro.) of the statutes is amended to read:

255.06 **(2)** WELL-WOMAN PROGRAM. (intro.) From the appropriation under s. 20.435 (5) (cb), the department shall administer a well-woman program to provide reimbursement for health care screenings, referrals, follow-ups, case management, and patient education provided to low-income, underinsured, and uninsured women. Reimbursement to service providers under this section shall be at the rate of reimbursement for identical services provided under medicare, except that, if projected costs under this section exceed the amounts appropriated under s. 20.435 (5) (cb), the department shall modify services or reimbursement accordingly. Within this limitation, the department shall implement the well-woman program to do all of the following:

SECTION 2147. 255.06 (2) (a) (intro.) of the statutes is renumbered 255.06 (2) (a) and amended to read:

255.06 **(2)** (a) *Breast cancer screening services.* Provide not more than $422,600 in each fiscal year as reimbursement for the provision of breast cancer screening services to women who are aged 40 years or older and whose income does not exceed